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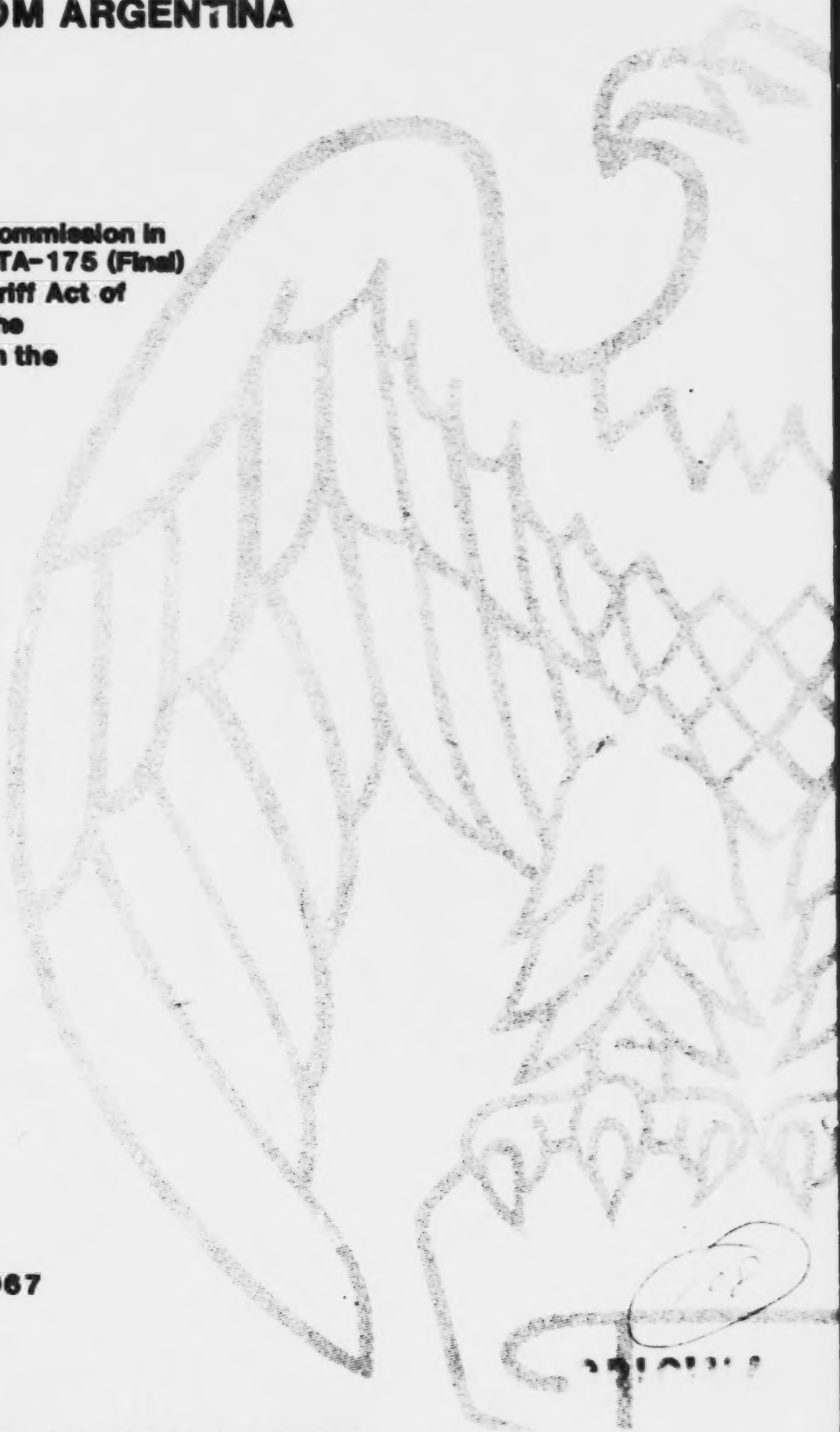
COLD-ROLLED CARBON STEEL PLATES AND SHEETS FROM ARGENTINA

Determination of the Commission in Investigation No. 731-TA-175 (Final) (Remand) Under the Tariff Act of 1930, Together With the Information Obtained in the Investigation



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UNITED STATES INTERNATIONAL TRADE COMMISSION

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Susan Liebeler, Chairman
Anne E. Brunsdale, Vice Chairman
Alfred E. Eckes
Seeley G. Lodwick
David B. Rohr

Staff Assigned:

George L. Deyman, Office of Investigations
Howard L. Gooley, Office of Economics
Robert M. Feinberg, Office of Economics
Kristian Anderson, Office of the General Counsel

Lynn Featherstone, Supervisory Investigator

Address all communications to
Kenneth R. Mason, Secretary to the Commission
United States International Trade Commission
Washington, DC 20436

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UNITED STATES INTERNATIONAL TRADE COMMISSION
Washington, DC

Investigation No. 731-TA-175 (Final--Court Remand)

COLD-ROLLED CARBON STEEL PLATES AND SHEETS FROM ARGENTINA

Determination

In response to a remand order of the U.S. Court of International Trade in the case of USX Corp. v. United States (Court No. 85-03-00325, Slip Op. 87-14, CIT February 9, 1987), and on the basis of the record 1/ developed in investigation No. 731-TA-175 (Final), the Commission determines 2/ that as of the date of the Commission's determination in investigation No. 731-TA-175 (Final), an industry in the United States was not materially injured or threatened with material injury, and the establishment of an industry in the United States was not materially retarded, by reason of imports from Argentina of cold-rolled carbon steel plates and sheets, provided for in item 607.83 of the Tariff Schedules of the United States, that have been found by the Department of Commerce to be sold in the United States at less than fair value (LTFV).

Background

On January 28, 1985, the Commission notified the Secretary of Commerce of its determination that, based on the record developed during the course of investigation No. 731-TA-175 (Final), an industry in the United States was not materially injured or threatened with material injury, and the establishment of an industry in the United States was not materially retarded, by reason of imports from Argentina of cold-rolled carbon steel plates and sheets, provided for in item 607.83 of the Tariff Schedules of the United States, that had been

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1/ The record is defined in sec. 207.2(i) of the Commission's Rules of Practice and Procedure (19 CFR § 207.2(i)).
2/ Commissioner Eckes dissenting.

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found by the Department of Commerce to be sold in the United States at less than fair value (LTFV).

The Commission's determination was subsequently challenged in the U.S. Court of International Trade by USX Corp., formerly known as United States Steel Corp. On February 9, 1987, the Court remanded the case to the Commission for further consideration consistent with the Court's opinion. The Court ordered the Commission to file its determination on remand with the Court within 45 days of the order, i.e., by March 26, 1987.

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VIEWS OF CHAIRMAN LIEBELER

Remand of Inv. No. 731-TA-175
Certain Cold-Rolled Carbon Steel Plates and Sheets
from Argentina

United States Steel Corporation appealed a final negative determination by the Commission in Certain Cold-Rolled Carbon Steel Plates and Sheets from Argentina.[1] The Court of International Trade, in USX v. United States,[2] remanded the investigation to the Commission for further findings and discussion of its rationale with respect to cumulation, causation, and threat of injury.

I determine that an industry in the United States is not materially injured, or threatened with material injury, by reason of certain cold-rolled carbon steel plates and sheets from Argentina which the Department of Commerce has determined are being sold at

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1 Inv. No. 731-TA-175, USITC Pub. 1637 (Jan. 1985).

2 Court No. 85-03-00325 (Feb. 9, 1987).

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less-than-fair-value.[3]

The Court of International Trade did not question the Commission's earlier findings on like product and domestic industry or the findings with respect to the condition of the industry. I therefore adopt the Commission's prior findings on these issues[4] from the original investigation and will not discuss them further.

The views that follow are my separate views on cumulation, causation and threat.

Cumulation

The Court of International Trade instructed the Commission to consider further its refusal to cross-cumulate because the reasons given by the Commission

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[3] Since there is an established domestic industry producing cold-rolled carbon steel plates and sheets, material retardation of the establishment of an industry is not an issue in this investigation and will not be discussed further.

[4] The like product is cold-rolled carbon steel plates and sheets. The domestic industry is comprised of all domestic producers of the like product. The domestic industry is materially injured.

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were all contrary to law. The CIT noted that cross-cumulation was not mandatory, but that it was not forbidden either. Since the cross-cumulation issue is currently on appeal for cases filed after passage of the Trade and Tariff Act of 1984,[5] and since the result with respect to cross-cumulation is not outcome determinative in this case, for this investigation I will cumulate imports across statutes if they compete and are subject to investigation.[6]

In its brief on remand, petitioner argued that the Commission should cumulate the Argentine imports with

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5 Bingham & Taylor Div. v. United States, 10 CIT ___, 627 F. Supp. 793 (1986), appeal docketed, No. 86-1140 (Fed. Cir. June 24, 1986). In 1984 the Tariff Act of 1930 was amended to include a provision on cumulation. It provides: "* * * [T]he Commission shall cumulatively assess the volume and effect of imports from two or more countries of like products subject to investigation if such imports compete with each other and with like products of the domestic industry in the United States market." 19 U.S.C. §1677(7)(C)(iv)(Supp. III 1985).

6 For a discussion of my views on cumulation after the enactment of the Trade and Tariff Act of 1984, see Oil Country Tubular Goods from Canada and Taiwan, Invs. Nos. 701-TA-255, 731-TA-276-277 (Final), USITC Pub. 1865 (1986); Certain Carbon Steel Products from Austria, Czechoslovakia, East Germany, Hungary, Norway,

(Footnote continued on next page)

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imports from Spain, South Africa, Brazil, South Korea, and Mexico.[7] In the original investigation, USX listed the same countries as candidates for cumulation.[8] For the reasons that follow, I have determined that it is only appropriate to cumulate imports of Argentina with those from South Korea.

It is not appropriate to cumulate fairly traded imports with unfairly traded imports. When an antidumping duty or a countervailing duty (CVD) is placed on imports, they cease to be "unfairly" traded imports. A countervailing duty was placed on Brazilian imports in June 1984, 6 months prior to the determination with respect to Argentina. With respect to the dumping case against Brazil, the Commission reached a final negative

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(Footnote continued from previous page)
Poland, Romania, Sweden, and Venezuela, Invs. Nos. 701-TA-225-234, 731-TA-218-217, 219, 221-226, and 228-235 (Preliminary), USITC Pub. 1642 (1985).

7 Remand Memorandum of USX Corporation at 9 (March 9, 1987). Except for Mexico, these countries were all subject to both CVD and dumping investigations since 1982. Mexico was subject only to a subsidy case.

8 I note that in its briefs to the Court of International Trade, USX did not mention Mexico as a candidate for cumulation.

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determination in September 1984. Petitions with respect to dumping by South Africa and Spain were withdrawn on May 10, 1984. The subsidy case concerning Spain was decided over two years prior to the Argentine case, as was the South African CVD case. The CVD case against Mexico was withdrawn effective April 18, 1984. The dumping petition with respect to Spain was withdrawn on January 18, 1985, one week prior to the determination with respect to Argentine imports. Thus, these imports were all fairly traded at the time of the original determination. There is no rational basis for cumulating the imports discussed above with those from Argentina.

The only country left, after subtracting all candidates which were not subject to investigation at the time of the original determination, is the Korean CVD case. The Korean investigation was decided subsequent to the Argentine case. The available evidence indicates that Korean imports competed with Argentine and domestic cold-rolled steel plates and sheets. Therefore, to comply with the mandate of the court, I will cumulate imports from Korea with imports from Argentina for purposes of this remand.

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Material Injury by Reason of Imports[9]

In order for a domestic industry to prevail in a final investigation, the Commission must determine that the dumped or subsidized imports cause or threaten to cause material injury to the domestic industry producing the like product. First, the Commission must determine whether the domestic industry producing the like product is materially injured or is threatened with material injury. Second, the Commission must determine whether any injury or threat thereof is by reason of the dumped or subsidized imports. Only if the Commission answers both questions in the affirmative, will it make an affirmative determination in the investigation.

Before analyzing the data, however, the first question is whether the statute is clear or whether one must resort to the legislative history in order to

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9 The analysis that follows was explicitly stated after the original determination in this investigation. See Certain Red Raspberries from Canada, Inv. No. 731-TA-196 (Final), USITC Pub. 1680, at 11-19 (1985) (Additional Views of Vice Chairman Liebeler). I am aware of no precedent that precludes its use in this remand.

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interpret the relevant sections of the antidumping law. The accepted rule of statutory construction is that a statute, clear and unambiguous on its face, need not and cannot be interpreted using secondary sources. Only statutes that are of doubtful meaning are subject to such statutory interpretation.[10]

The statutory language used for both parts of the two-part analysis is ambiguous. "Material injury" is defined as "harm which is not inconsequential, immaterial, or unimportant."[11] As for the causation test, "by reason of" lends itself to no easy interpretation, and has been the subject of much debate by past and present commissioners. Clearly, well-informed persons may differ as to the interpretation of the causation and material injury sections of title VII. Therefore, the legislative history becomes helpful in interpreting title VII.

The ambiguity arises in part because it is clear that the presence in the United States of additional foreign

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10 C. Sands, Sutherland Statutory Construction, §45.02 (4th ed. 1985).

11 19 U.S.C. § 1677(7)(A)(1982).

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supply will always make the domestic industry worse off. Any time a foreign producer exports products to the United States, the increase in supply, ceteris paribus, must result in a lower price of the product than would otherwise prevail. If a downward effect on price, accompanied by a Department of Commerce dumping or subsidy finding and a Commission finding that financial indicators were down were all that were required for an affirmative determination, there would be no need to inquire further into causation.

But the legislative history shows that the mere presence of LTFV imports is not sufficient to establish causation. In the legislative history to the Trade Agreements Acts of 1979, Congress stated:

> [T]he ITC will consider information which indicates that harm is caused by factors other than the less-than-fair-value imports.[12]

The Senate Finance Committee emphasized the need for an exhaustive causation analysis, stating, "the Commission must satisfy itself that, in light of all the information

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12 Report on the Trade Agreements Act of 1979, S. Rep. No. 249, 96th Cong., 1st Sess. 75 (1979).

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presented, there is a sufficient causal link between the less-than-fair-value imports and the requisite injury."[13]

The Finance Committee acknowledged that the causation analysis would not be easy: "The determination of the ITC with respect to causation, is under current law, and will be, under section 735, complex and difficult, and is matter for the judgment of the ITC."[14] Since the domestic industry is no doubt worse off by the presence of any imports (whether LTFV or fairly traded) and Congress has directed that this is not enough upon which to base an affirmative determination, the Commission must delve further to find what condition Congress has attempted to remedy.

In the legislative history to the 1974 Act, the Senate Finance Committee stated:

> This Act is not a 'protectionist' statute designed to bar or restrict U.S. imports; rather, it is a statute designed to free U.S. imports from unfair price discrimination practices. * * * The Antidumping Act is designed to discourage and

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[13] Id.

[14] Id.

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> prevent foreign suppliers from using unfair price discrimination practices to the detriment of a United States industry.[15]

Thus, the focus of the analysis must be on what constitutes unfair price discrimination and what harm results therefrom:

> [T]he Antidumping Act does not proscribe transactions which involve selling an imported product at a price which is not lower than that needed to make the product competitive in the U.S. market, even though the price of the imported product is lower than its home market price.[16]

This "complex and difficult" judgment by the Commission is aided greatly by the use of economic and financial analysis. One of the most important assumptions of traditional microeconomic theory is that firms attempt to maximize profits.[17] Congress was obviously familiar with the economist's tools: "[I]mporters as prudent businessmen dealing fairly would be interested in

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15 Trade Reform Act of 1974, S. Rep. 1298, 93rd Cong., 2 Sess. 179.

16 Id.

17 See, e.g., P. Samuelson & W. Nordhaus, Economics 42-45 (12th ed. 1985); W. Nicholson, Intermediate Microeconomics and Its Application 7 (3d ed. 1983).

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maximizing profits by selling at prices as high as the U.S. market would bear."[18]

An assertion of unfair price discrimination should be accompanied by a factual record that can support such a conclusion. In accord with economic theory and the legislative history, foreign firms should be presumed to behave rationally. Therefore, if the factual setting in which the unfair imports occur does not support a finding that there is any gain to be had by unfair price discrimination, it is reasonable to conclude that any injury or threat of injury to the domestic industry is not "by reason of" such imports.

In many cases unfair price discrimination by a competitor would be irrational. In general, it is not rational to charge a price below that necessary to sell one's product. In certain circumstances, a firm may try to capture a sufficient market share to be able to raise its price in the future. To move from a position where the firm has no market power to a position where the firm has such power, the firm may lower its price below that

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[18] Trade Reform Act of 1974, S. Rep. 1298, 93rd Cong. 2d Sess. 179.

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which is necessary to meet competition. It is this condition which Congress must have meant when it charged us "to discourage and prevent foreign suppliers from using unfair price discrimination practices to the detriment of a United States industry."[19]

In Certain Red Raspberries from Canada, I set forth a framework for examining what factual setting would merit an affirmative finding under the law interpreted in light of the cited legislative history.[20]

> The stronger the evidence of the following . . . the more likely that an affirmative determination will be made: (1) large and increasing market share, (2) high dumping margins, (3) homogeneous products, (4) declining prices and (5) barriers to entry to other foreign producers (low elasticity of supply of other imports).[21]

The statute requires the Commission to examine the volume of imports, the effect of imports on prices, and

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19 Trade Reform Act of 1974, S. Rep. 1298, 93rd Cong., 2d Sess. 179.

20 Inv. No. 731-TA-196 (Final), USITC Pub. 1680, at 11-19 (1985) (Additional Views of Vice Chairman Liebeler).

21 Id. at 16.

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the general impact of imports on domestic producers.[22] The legislative history provides some guidance for applying these criteria. The factors incorporate both the statutory criteria and the guidance provided by the legislative history.

Causation analysis

Examining import penetration data is relevant because unfair price discrimination has as its goal, and cannot take place in the absence of, market power. As noted above, I have cumulated imports of Argentina with those from the Republic of Korea. Cumulated imports accounted for less than 1 percent of apparent U.S. consumption during 1981, then increased to 1.4 percent in 1982 and 2.0 in 1983. Import penetration was 3.4 percent in January-September 1984 compared to 1.9 percent in the corresponding period of 1983.[23] The cumulated import penetration of Argentina and Korea is very small and not consistent with a finding of unfair price discrimination.

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[22] 19 U.S.C. § 1677(7)(B)-(C) (1982 & Supp. III 1985).

[23] Supplemental Report at Table 3.

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The second factor is a high margin of dumping or subsidy. The higher the margin, ceteris paribus, the more likely it is that the product is being sold below the competitive price[24] and the more likely it is that the domestic producers will be adversely affected. The Department of Commerce calculated dumping margins of 30.3 percent for Propulsora, and 242.5 percent for Somisa.[25] During the period under investigation by the Commission, most of the imports of cold-rolled carbon steel plates and sheets from Argentina to the United States were from Propulsora.[26] Thus, the average of these weighted-average margins would be much closer to 30.3 percent than to 242.5 percent. However, even the (quantity) weighted-average margin is still moderately high. This margin is not inconsistent with a finding of unfair price discrimination.

The third factor is the homogeneity of the products. The more homogeneous the products are, the greater will be

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[24] See text accompanying note 16, supra.

[25] Supplemental Report at A-3.

[26] The exact quantity figures are confidential.

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the effect of any allegedly unfair practice on domestic producers. Information from the staff report indicates that the Argentine product is substitutable for the domestic product for a large range of uses. The imports are viewed generally as a satisfactory substitute for the domestic product in many uses. Despite potential quality differences, I find the imported and domestic product to be substitutable, although they are not perfect substitutes.[27]

As to the fourth factor, domestic producers might choose to lower their prices to prevent loss of market share. The Commission requested pricing data for three different specifications of the like product sold to steel service centers (SSCs) and end users.[28] The

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27 Supplemental Report at A-10-15 (discussion of quality differences between Argentina and other imports and the domestic products).

28 The three products identified below are those used by the Commission to collect pricing information in its questionnaires:
product 1: Cold-rolled carbon steel sheets, in coils, commercial quality, class 1, 0.0280 inch through 0.0630 in in thickness, 45 inches through 60 inches in width;
product 2: Cold-rolled carbon steel sheets, in coils, commercial quality, class 2, 0.0280 inch through 0.0630
(Footnote continued on next page)

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questionnaire data provided weighted-average net selling prices for sales of these domestic products by quarters.

Prices for sales to SSCs for all three products decreased from the first quarter of 1982 through the middle of 1983.[29] Prices for sales to end users followed a similar trend.[30] These pricing data are not inconsistent with a finding of unfair price discrimination.

The fifth factor is barriers to entry (foreign supply elasticity). If there are barriers to entry (or low

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in in thickness, 45 inches through 60 inches in width; product 3: Cold-rolled carbon steel sheets, in coils, AKDQ A-620, 0.0280 inch through 0.0630 in in thickness, 45 inches through 60 inches in width.

29 Prices rose for all three products during 1984, surpassing the prices achieved in 1982. Report at Table 16. I have not relied on the 1984 price recovery because that would involve presupposing that the filing of the case had no impact.

30 For product 1, prices decreased from the first quarter of 1982 through the first quarter of 1983, then rose through the third quarter of 1984; for product 2, prices decreased irregularly from the first quarter of 1982 through the second quarter of 1983, then rose through the third quarter of 1984; for product 3, prices decreased irregularly from the first quarter of 1982 though the fourth quarter of 1982, then rose through the third quarter of 1984.

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foreign elasticity of supply) it is more likely that a producer can gain market power. Imports from Argentina and Korea accounted for a very small portion of total imports into the United States over the period of investigation. Imports from non-cumulated countries accounted for the vast majority of imports into the United States of certain cold-rolled carbon steel plates and sheets over the period of investigation, accounting for more than 83 percent of imports into the United States.[31] Less than a third of these imports were subject to quantitative restrictions due to voluntary restraint agreements at the time of the original determination. Since imports from other countries account for such a large portion of total imports, I conclude that barriers to entry are low.

These factors must be balanced in each case to reach a sound determination. The dumping margins are moderate, domestic prices generally declined during 1982-1983, and the domestic and imported products are substitutable. However, these factors are outweighed by the absence of barriers to entry, and the fact that cumulated import

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[31] Supplemental Report at A-5.

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penetration is very low, which strongly suggest the absence of unfair price discrimination.[32]

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[32] The Court of International Trade rejected the Commission's use of the lost sales data in this investigation. The Commission had found "underselling" but found no evidence of "confirmed lost sales." The court held that the Commission could not rely on the lack of evidence on lost sales as the basis for its negative determination because the Commission had not undertaken a complete investigation of lost sales allegations. Slip op. at 7-10.

As is indicated in these views, supra, I have not relied on evidence of underselling or lost sales. I have stated in many opinions that I do not consider evidence of underselling or overselling ordinarily to be probative on the question of causation. See, e.g., Certain Table Wine from the Federal Republic of Germany, France, and Italy, Invs. Nos. 701-TA-258-60 and 731-TA-283-85 (preliminary), USITC Pub. 1771 at 36-38 (Oct. 1985) (Additional Views of Vice Chairman Liebeler); Certain Welded Carbon Steel Pipes and Tubes from Thailand and Venezuela, Invs. Nos. 701-TA-242 and 731-TA-252-253 (preliminary), USITC Pub. 1680 (1985) (Separate Views of Vice Chairman Liebeler).

The anecdotal evidence gathered by the Commission on lost sales is also not particularly useful in determining the presence or absence of causation. See Heavy-Walled Rectangular Welded Carbon Steel Pipes and Tubes from Canada, Inv. No. 731-TA-254 (preliminary), USITC Pub. 1691 (1985) (Views of Vice Chairman Liebeler). See also Lone Star Steel Corp. v. United States, 10 CIT ___, Slip Op. 86-122, at 5-6 (Nov. 28, 1986)("anecdotal evidence of lost sales and revenue rarely adds distinct information to a record of this type but rather substantially confirms what is substantially demonstrated" by other evidence. "The court has indicated on other occasions that instances of lost sales alone do not mandate a finding of injury ...").

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Threat of Material Injury

An affirmative threat determination, at the time of the original investigation, was required if the threat of material injury was real and actual injury was imminent.[33] The second part of this test was obviously met at the time of the original investigation. The Commission had found that the industry was materially injured. The court was not satisfied with the Commission's treatment of whether the threat was real.[34] In response to the court's criticism of the use of what it considered to be "stale" evidence in the original investigation concerning respondents' capacity and capacity utilization figures,[35] the Commission has gathered additional information on these statutory criteria.

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[33] This standard was codified subsequent to the original determination. 19 U.S.C. §1677(7)(F)(ii) (Supp. III 1985).

[34] Vice Chairman Brunsdale has found that the question of threat in this case is moot. In future cases, the Commission could seek additional time from the Court of International Trade and investigate whether injury actually occurred.

[35] Slip. Op. at 29-32.

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The Commission used two different sources for capacity and production data for Argentina cold-rolled carbon steel sheets. Information received from the foreign producers shows that capacity and capacity utilization of the Argentine producers remained almost constant from 1983 to 1984. Capacity utilization increased from a moderate level in 1981 to a very high level in 1983-1984.[36] Data from public sources indicate that production may have been lower and capacity higher over the period, leading to lower capacity utilization rates.[37] Respondents have commented on these discrepancies.[38] I am convinced that the respondents' capacity figures are closer to the "practical capacity" figures requested by the Commission.

There was no evidence presented which indicates that the Argentine producers intended to increase their capacity or capacity utilization rates. Moreover, even if the Argentine producers did increase their exports to the United States by diverting all of their exports from third

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36 The actual figures are confidential. Supplemental Report at A-1 (March 13, 1987).

37 Id. at A-2.

38 Brief of Propulsora Siderurgica (Remand), at 45-49.

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countries, cumulated imported penetration would still constitute an extremely small percentage of apparent U.S. consumption.[39]

Conclusion

Therefore, I conclude that an industry in the United States is not materially injured or threatened with material injury by reason of dumped imports of certain cold-rolled carbon steel plates and sheets from Argentina.

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39 I note that the court did not state that the 1983 data did not support a negative finding, only that it was "stale." The additional data gathered indicates no significant change between 1983 and 1984 with respect to Argentine production or capacity.

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VIEWS OF VICE CHAIRMAN ANNE E. BRUNSDALE

Cold-Rolled Carbon Steel Plates and Sheets
from Argentina

Investigation 731-TA-175 (Final)

March 26, 1987

This case was initially decided by the Commission in 1985 and is now before us on remand from the U. S. Court of International Trade. I was not at the Commission in 1985 and therefore have an opportunity to consider the matter for the first time. As explained below, I find that the domestic steel industry was not materially injured or threatened with material injury by reason of dumped imports of cold-rolled carbon steel plates and sheets from Argentina. I also conclude that the issue of threat of material injury is moot in light of the enormous delay between the Commission's original determination and the remand in this case.

Material Injury

According to my analysis, the greatest possible effect that the dumped imports could have had on the domestic industry was to

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lower domestic shipments by only 1 percent, suppress domestic prices by only 0.3 percent, and cut domestic sales by only 1.3 percent. By virtually any standard these magnitudes are, if not de minimis, hovering very close to de minimis. Clearly they fall far short of material injury and therefore dictate a negative determination.

The Court did not question the Commission's prior findings on like product, definition of domestic industry, and condition of the domestic industry. Accordingly, I will not address those issues here and will adopt the Commission's prior determinations. That is, I assume that the like product is cold-rolled carbon steel plates and sheets, the domestic industry is all producers of the like product, and the domestic industry is materially injured.

To analyze the effects of dumped imports on the domestic industry, it is necessary to consider among other key factors the import penetration ratio for the dumped imports and the dumping margin reported by the Department of Commerce (Commerce).[1] Dumped imports from Argentina were a relatively small part of

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[1] For a discussion of the role of the import penetration ratio and the dumping margin in assessing harm to a domestic industry, see Memorandum from the Office of Economics, EC-J-010 (January 7, 1986), at 29-31.

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apparent domestic consumption throughout the period of investigation. On a quantity basis the share of dumped imports was 0.9 percent in 1982, 0.8 percent in 1983, and 0.9 percent in the first nine months of 1984.[2] The weighted-average dumping margin reported by Commerce was very high, 122.3 percent.[3]

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[2] Imports from Argentina were less than 0.05 percent of consumption in 1981. Memorandum INV-K-029, Information Developed in Response to the Court of International Trade's Remand of Investigation 731-TA-175 (Final), Cold-Rolled Carbon Steel Plates and Sheets from Argentina (March 13, 1987) (hereinafter "Supplemental Report"), at 7 (Table 2). As I have explained elsewhere, I believe that it is generally more appropriate to analyze the effects of imports on the domestic market using market penetration on a value basis. See EPROMs from Japan, Inv. 731-TA-288 (Final), USITC Pub. 1927, at 32-39 (1986) (Additional Views of Vice Chairman Brunsdale). However, in this case there is little difference between the two measures. On a value basis the share of dumped imports was constant at 0.7 percent of consumption in 1982, 1983, and the first nine months of 1984.

[3] Supplemental Report at A-6. The recent opinion of the Court of International Trade in Hyundai Pipe Co., Ltd., et al. v. U.S. International Trade Commission, et al., Slip Opinion 87-18 (February 23, 1987), makes clear that it is appropriate for the Commission to consider the magnitude of the subsidy or dumping margin in assessing causation. Indeed, there is substantial support in the legislative history for the proposition that the Commission should consider the subsidy or dumping margin in every case. The House Report to the Trade Act of 1979 states: "for one type of product, price may be the key factor in determining the amount of sales elasticity, and a small price differential resulting from the amount of the subsidy or the margin of dumping can be decisive; in others the margin may be of lesser significance." H. Rep. 317, 96th Cong., 1st Sess. at

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For purposes of my analysis I will assume that the entire dumping margin was passed through to reduce the price of Argentine imports.[4] Thus if importers had to pay a "fair" price for Argentine carbon steel plates and sheet, they would have had to pay a price that would have been more than double the amount they in fact paid. In all likelihood imports from Argentina would have been priced out of the U.S. market under this circumstance and therefore would have been zero.[5] As a result, some of the Argentine business would have gone to other foreign suppliers (e.g., Brazil and Korea) and the rest would have gone to domestic firms.[6] In order to determine the upper

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47 (1979) (emphasis added). The Senate Report contains almost identical language. S. Rep. No. 249, 96th Cong., 1st Sess. at 88 (1979). See also H.R. Rep. No. 317 at 55; S. Rep. No. 249 at 57-58.

4 If, as is likely, the entire dumping margin was not passed through to imported goods, then my analysis overstates the magnitude of the adverse effects on the domestic industry caused by dumped imports.

5 If there were still some imports from Argentina at a "fair" price, the effects on domestic industry, discussed below, are overstated.

6 Note that there would also have been some reduction in total consumption because the average price of steel plates and sheet would be higher. This reduction in consumption is ignored in the following analysis and does not affect the

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bound for the effects on domestic firms, suppose that all of this business would have gone to U.S. firms. Then in 1983, for example, the 130,000 short tons imported from Argentina would have been added to the 12,972,000 short tons supplied by U.S. firms.[7] This means that U.S. shipments would have been 1 percent higher in the absence of the dumping. Alternatively, the dumped imports from Argentina reduced domestic shipments by at most 1 percent.

It is also possible to determine an upper bound for the degree to which dumped imports suppressed domestic prices. Thanks to the excellent work of the Office of Economics, we have useful information about the price sensitivity of domestic supply in this case.[8] The best estimate of this price sensitivity indicates that a 1 percent increase in domestic price will

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conclusion. Also note that the demand for steel plates and sheet, which are intermediate products, is low to moderate. For a survey of the evidence on demand elasticity. See Staff Memorandum INV-K-029 at 24, n. 3.

7 Supplemental Report at A-5 (Table 2). Comparable results would have been obtained if data for other years were used.

8 Price sensitivity of domestic supply refers to the elasticity of supply, which, other things remaining the same, is defined as the percentage change in quantity supplied divided by the percentage change in price. See, e.g., P. Samuelson and W. Nordhaus, Economics at 380-84 (12th ed. 1985).

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produce a 3.5 percent increase in the quantity supplied by domestic producers.[9] This also means that a 1 percent increase in demand for domestic product will lead to an increase in domestic price of only 0.29 percent (equals (1/3.5) times 1 percent). As explained above, this increase in domestic demand is precisely what would have occurred if dumped imports from Argentina were priced out of the domestic market. Thus the maximum degree of price suppression in this case is 0.3 percent.

Finally, since dumped imports reduced domestic shipments by 1 percent and suppressed domestic prices by 0.3 percent, this means that dumped imports reduced industry sales by only 1.3 percent (1 percent + 0.3 percent). In other words, lost sales by U.S. firms attributable to the dumped imports amounted to no more than 1.3 percent of total industry sales. I hasten to add that I use the term "lost sales" differently than the Staff Report and some of my colleagues do. As I have explained before, I believe that the lost sales information in the staff report almost always is a collection of anecdotes about the experience of individual firms with particular potential customers and transactions and in general is not probative on the issue of causation. That is, it

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[9] That is, the domestic supply elasticity is 3.5. INV-K-029 at 28 n. 1.

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almost never has anything to do with a causal relationship between dumped imports and material injury to the domestic industry.[10] In contrast, I use the term "lost sales" to mean the reduction in domestic industry sales, which I express as a percent of total industry sales. Clearly this is always relevant in causation analysis.

Based on the foregoing analysis it is apparent that the adverse effects on the domestic industry from dumped imports from Argentina were very tiny. Accordingly, I conclude that dumped imports from Argentina were not a cause of material injury.

Cumulation

The court in USX remanded the issue of cumulation to the Commission for further consideration. Since I do not find that imports from Argentina, analyzed separately, caused injury to the U.S. industry, I must now consider whether imports from Brazil, Mexico, South Africa, South Korea, and Spain should be added to those from Argentina to evaluate their cumulative effect.

At the time of the Commission's original final determination in this case, the Commission's past practice of assessing the

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[10] See, e.g., Certain Welded Carbon Steel Pipes and Tubes

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volume and price effects of imports from two or more countries cumulatively was about to be changed by the Trade and Tariff Act of 1984, which specified the circumstances under which imports should be cumulated.[11] This amendment took effect with respect to investigations initiated after October 30, 1984.[12] The instant case, begun on February 10, 1984, is not subject to the cumulation provision of the 1984 act.

Prior to the 1984 act, there were no specific references to cumulation in the controlling statutes. As a matter of doctrine, the Commission accepted that cumulation should be considered if "the factors and conditions of trade in the particular case show its relevance to the determination of injury."[13] My review of previous cases indicates that in practice the Commission at best rarely cumulated prior to the 1984 act.

What is most clear from the Commission's decisions of that period is that the Commission never cross-cumulated and never

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from India, Taiwan, and Turkey, Invs. 731-TA-271 through 273 (Final), USITC Pub. 1839, at 49-50 (Views of Vice Chairman Liebeler and Commissioner Brunsdale)(1986).

11 19 U.S.C. 1677(7)(c)(iv) (Supp. III 1985).

12 Pub.L. 98-573, Sec. 626(b)(1).

13 Certain Steel Products from Belgium, Brazil, France, Italy, Luxembourg, The Netherlands, Romania, The United Kingdom, and West Germany, Invs. 701-TA-86-144, 146, and 147 (Preliminary) and 731-TA-53-86 (Preliminary), USITC Pub. 1221, at 16-17 (1982), quoting S. Rep. No. 93-1298, 93rd Cong., 2d Sess. at 180 (1984).

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cumulated under the countervailing duty statute.[14] Indeed, at the time of its decision in the instant investigation, the Commission had declined to cross-cumulate for seventeen years. I see no reason why the Commission's practice should be different in this case.

Even if I were writing on a completely clean slate, however, I would not cross-cumulate dumped and subsidized imports. My views on this matter were first set forth in Certain Brass Sheet and Strip from Brazil, Canada, France, Italy, The Republic of Korea, Sweden, and West Germany.[15] At that time I noted that even after the 1984 amendment there was ample precedent that cross-cumulation was inappropriate. In my view the Commission cannot make an affirmative determination in, for example, a countervailing duty case based on injury alleged to be occurring from dumped imports. It is my impression that a majority of the Commission share that view.[16]

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14 W.B.T. Mock, Jr., Cumulation of Import Statistics in Injury Investigations before the International Trade Commission, 7 Northwestern J. of Int'l Law & Bus. at 433, 439 (1986) (hereinafter "Mock").

15 Invs. 701-TA-269-270 (Preliminary) and 731-TA-311-317 (Preliminary), USITC Pub. 1837 (1986), at 11, n. 28.

16 See, Certain Fresh Cut Flowers from Canada, Chile, Colombia, Costa Rica, Ecuador, Israel, and The Netherlands, USITC Pub. 1956 (1987), at 68-71 (Commissioner Rohr), and Certain Brass Sheet and Strip, supra note 15 at 11, n. 28 (Chairman Liebeler and Vice Chairman Brunsdale). Commissioner Rohr provides a useful analysis of some of the problems inherent in the concept of cross-cumulation in Certain Fresh Cut Flowers, supra at 68-71 (Additional views of Commissioner Rohr).

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While I believe that cross-cumulation is inappropriate in this case as a matter of law, I am mindful that the Court of International Trade thinks otherwise. For purposes of this opinion I am willing to acquiesce in the Court's position because I find that cumulation is inappropriate for many other reasons. These reasons are set forth below for each of the countries whose imports the Commission has been asked to cumulate:

o Some countervailing duty and antidumping investigations were terminated as a result of a negative determination or withdrawal of the petition.[17] This covers certain imports from Brazil, Korea, Mexico, South Africa, and Spain. It is appropriate to assume that the imports from these countries were fairly traded, and hence not subject to cumulation.

o Some imports were subject to outstanding countervailing duty orders at the time of the Commission's determination in the instant investigation. This covers certain imports from Brazil, South Africa, and Spain. As a result of these orders, the effects of subsidies on U.S. prices of covered imports would have been nullified and the imports thus would be fairly traded. It would not be proper to cumulate fairly traded imports with imports determined to be unfairly traded.

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[17] Supplemental Report at A-3.

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o One investigation was ongoing at the time of the Commission's original determination and subsequently resulted in an affirmative decision, but on the basis of threat. This covers certain imports from Korea, for which a countervailing duty order was issued in February 1985. For good reason the Commission has previously declined to cumulate imports that have only been the subject of a determination of a threat of material injury. On this issue I am persuaded by the reasoning of Commissioner Rohr.[18] I decline to cumulate imports from Korea for the same reasons.

Threat of Material Injury

Given the enormous delay between the original decision and the remand to the Commission in this case, I conclude that the issue of whether Argentine imports posed a threat of material injury to the domestic industry in January 1985 is moot and should not be addressed or decided by the Commission. There is no point in having this Commission decide now what was likely to occur in the years after January 1985 when we can look at the experience of

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[18] See Certain Welded Steel Pipes and Tubes from Turkey and Thailand, Inv. 701-TA-253 (Final), USITC Pub. 1810 (1986) at 27, n. 3. See also the General Counsel's Memorandum in that same case (GC-J-024) (Feb. 6, 1986).

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the industry and see what actually did occur. Both the legislative history and common sense suggest that the threat provisions of Title VII were not intended to require the Commission to engage in a hypothetical analysis in 1987 of what the facts existing in 1984 indicated would happen in 1985 and 1986. In my view such an analysis belongs more to the realm of Alice in Wonderland than the world of sound legal reasoning under the trade laws.

The statute controlling our analysis of the threat issue simply provides that the Commission is to determine if an industry in the United States "is threatened with material injury..."[19] The only purpose of the threat provision is to prevent material injury to the domestic industry before that injury occurs. The legislative history on this point could not be more clear:

> The 'threat of material injury' standard is intended to permit import relief under the countervailing duty and antidumping laws before actual injury occurs and should be administered in a manner so as to prevent actual injury from occurring.[20]

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[19] 19 U.S.C. 1673(2)(A)(ii).

[20] Sen. Rep. No. 249, 96th. Cong., 1st Sess., at 89 (1979). Accord: H. Rep. No. 317, 96th. Cong, 1st. Sess., at 47 (1979).

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The threat provision simply was not intended to be redundant of the actual injury standard and to address after-the-fact situations where the injury has actually occurred. Indeed, in its opinions, the Commission has fairly consistently treated the analysis of the existence of a threat as a separate and different question from the inquiry regarding the existence of actual injury. In fact the Commission has routinely declined to address the threat issue where actual material injury to the domestic injury has been found.[21] It is thus clear to me that the threat provision, unlike the provisions dealing with actual injury, was designed to deal with situations where the Commission would not be able to know on the basis of its investigation whether actual injury to the domestic injury had or had not occurred. If the facts can be examined to determine if actual material injury has occurred, the threat provision is not relevant.

While the Commission's analysis of the threat issue necessarily involves some prediction on the Commission's part,

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[21] See, e.g., the recent Commission majority opinions in Oil Country Tubular Goods from Israel, Inv. 701-TA-271 (Final), USITC Pub. 1952 (1987); and Certain Brass Sheet and Strip from France, Italy, Sweden, and West Germany, Inv. 701-TA-270 (Final), USITC Pub. 1951 (1987).

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the legislative history makes clear that Congress expected our consideration of the existence of a "threat" to domestic industry to be firmly grounded in fact, not supposition or conjecture. Congress intended that we analyze and rely on as many of the facts as we could establish at the time of our determination. The Senate Committee on Finance explained in 1979:

> In determining whether an industry in the United States is threatened with material injury, the ITC will consider the likelihood of actual material injury occurring.... An ITC affirmative determination with respect to threat of material injury must be based upon information showing that the threat is real and injury is imminent, not a mere supposition or conjecture.[22]

Similar views were expressed that year by the House Committee on Ways and Means:

> the committee intends that the ITC affirmative determination shall be based upon evidence showing that the threat is real and imminent and not upon mere supposition or conjecture.[23]

Congress codified this principle in its recent amendments to the statute:

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[22] S. Rep. No. 249, 96th Cong., 1st Sess., at 88-89 (1979).

[23] House Rep. No. 317, 96th. Cong., 1st. Sess., at 47 (1979).

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> Any determination by the Commission under this subtitle that an industry in the United States is threatened with material injury shall be made on the basis of evidence that the threat of material injury is real and that actual injury is imminent. Such a determination may not be made on the basis of mere conjecture or supposition.[24]

Indeed, in the leading case before the Court of International Trade in this area, Alberta Gas Chemicals, Inc. v. United States,[25] the court struck down an ITC affirmative determination of likelihood of material injury because the majority's analysis was "flawed with supposition and conjecture."

Based on the foregoing, it is plain to me that Congress could not have intended that the Commission speculate about reality when the facts can be known with certainty. If the time of potential injury no longer is in the future, the threat provision has no application because its use cannot prevent injury "before actual injury occurs." If the actual facts can be known with certainty, to ignore those facts in favor of a prediction of what might have happened, based on facts occurring at some other time, flies in the face of the congressional mandate that our decisions be made on the basis of evidence and

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[24] 19 U.S.C. 1677(F)(ii).

[25] 515 F. Supp. at 780 and 791 (1981).

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not on the basis of conjecture or supposition.[26]

How then should these principles be applied in this case, which involves a record compiled over two years ago? While there are three alternative courses that could be followed, only one comports with the congressional direction that the analysis of the existence of a likely threat of material injury not be an exercise in sheer speculation.

First, we could decide the threat issue on the basis of the record as it existed in January 1985, supplemented, as directed by the court, to include certain additional facts occurring during the pre-1985 time period. This approach ignores what actually happened during 1985, 1986, and 1987, when the injury posed by the alleged threat would have materialized. I submit that this approach does not comport with the direction of Congress that the Commission apply the threat provision to prevent injury before it occurs. It equally does not comport with the congressional mandate that the threat determination be based on real evidence, rather than speculation, particularly

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[26] Since the remedy resulting from a finding of threat (like the remedy resulting from a finding of actual injury) is simply the imposition of an antidumping or countervailing duty, it is clear that the threat provision was not intended to punish respondents for <u>past</u> conduct or, through the imposition of dumping or countervailing duties, compensate petitioners for injury caused by <u>past</u> events.

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when (as here) that real evidence is presumably available.[27]

Second, the Commission could determine if there was a threat in January 1985, based on the events that actually occurred in 1985, 1986, and 1987. This approach has the benefit of avoiding some of the speculation inherent in the first approach and thus seems more consistent with congressional intent. But it would do nothing to prevent material injury before it occurred. Moreover, it would still require speculation regarding the essential fact of whether Argentine imports were dumped after the period of the original investigation. Certainly no dumping margin was determined by the Department of Commerce for the 1985-1987 time frame.[28] Finally, to pursue this approach would reward petitioner for a lack of diligence, since it could have filed a

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[27] Some might suggest that the proper solution to this problem is to decide the threat issue on the basis of the 1984 record and, assuming the determination is affirmative, leave it to respondents to seek review under Section 751 of the Tariff Act of 1930 if events after January 1985 show that the threat did not materialize. This approach is not satisfactory because the statute would place the burden of persuasion on respondents to show some changed circumstances, even if the facts show that respondents would not have lost the case originally.

[28] As a practical matter this approach would require that the Commission conduct a new investigation for this two-and-one-quarter-year period. Such an exercise could not possibly be completed during the limited time provided for this remand.

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petition at any time during the years 1985-1987 if the facts showed that it was suffering material injury from dumped imports.[29]

I choose the third alternative, which is to find the question of threat of material injury to be moot in this case. In so deciding, I am mindful that the Court of International Trade assumed that the threat issue would be addressed by the Commission on remand. I am persuaded however, that mootness was not addressed by the court and we should not assume by the court's silence on this issue that it would have ruled contrary to the views expressed in this opinion.

I am also mindful that my view of this matter would mean that the petitioner in this case would not have any benefit from the review and reconsideration of the Commission's original determination regarding the threat of material injury. However, since petitioner easily could have protected its interests by filing another petition if actual injury occurred while its appeal was pending, it hardly would be prejudiced if the majority

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[29] In any event, I have examined the evidence in this case and I find that I cannot reach a reasoned decision on the existence of a threat on the basis of the current record. The CIT observed in this very case that "the absence of information necessary for a thorough analysis may render a determination unsupported by substantial evidence." Slip opinion at 29.

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of my colleagues were to adopt my views. Furthermore, the staleness of the record is caused entirely by the enormous delay between the Commission's final determination and the resolution of the appeal. The Commission's determination in this case could have been considered in the Court of International Trade within a few months after January 1985 when it was issued. Instead, petitioner allowed this case to lie dormant in the CIT for over a year.[30] Had that appeal been promptly processed by petitioner and resolved by the CIT, the record would have been sufficiently contemporaneous so that mootness would not be at issue. Instead, the appeal consumed over two years. To decide that the threat issue is moot under these circumstances is neither radical nor surprising.

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[30] Petitioner filed its complaint in the CIT on March 8, 1985. Petitioner did not file a motion in the case until April 1986 when it finally moved for a protective order preliminary to gaining access to confidential portions of the record.

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VIEWS OF COMMISSIONER SEELEY LODWICK

Based on my review of the record in this investigation and the opinion of the Court of International Trade in USX Corp. v. United States, I determine that the domestic industry producing cold-rolled carbon steel plates and sheets (cold-rolled sheet) is not materially injured nor is it threatened with material injury by reason of imports from Argentina determined by the Department of Commerce to be sold at less than fair value (LTFV).

I believe that this remand focuses on three substantive issues: (1)cumulation, (2)causation of material injury, either by Argentine imports alone or cumulatively with other imports, and (3)threat. Each of these issues are discussed in turn in the following paragraphs. Nothing in the remand order affects my original findings with respect to like product, domestic industry, or the condition of the domestic industry, so I readopt my earlier views on these matters.

Finally, my analyses of these three substantive issues are quite similar to those of my colleague Commissioner Rohr. However, I feel that some individual articulation on these issues may be beneficial given the nature of this proceeding.

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Cumulation

At the time of the initial investigation, cumulation was discretionary.[1/] I assessed the appropriateness of cumulation based on the nature of the product, market conditions, and the history, trend, and marketing of the imports. This general approach, with numerous variations by individual Commissioners, was sometimes referred to as a "contributing effects" test. I initially found, and upon review again find, that based on the prevailing criteria at the time of the original investigation, cumulation is inappropriate.

USX has argued that imports from Spain, South Africa, Brazil, Korea, and Mexico were candidates for cumulation. In fact, the only imports found to be unfairly traded, where the investigation was not terminated by either a negative determination at the Department of Commerce or the Commission, or by the withdrawal of the petition, were from Brazil (Countervailing Duty, CVD, order issued June 1984), Korea (CVD order issued February 1985), South Africa (CVD order issued September 1982), and Spain (CVD order issued January 1983).[2/]

1/ See Lone Star Steel Co. v. United States, Slip Op. 86-122 at 7 (CIT Nov. 1986).

2/ See Supplemental Report to the Commission, Information Developed in Response to the Court of International Trade's Remand of Investigation No. 731-TA-175(Final), Cold-Rolled Carbon Steel Plates and Sheets from Argentina (Supp. Rpt.) at A-3.

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The quantities of unfair imports from South Africa and Spain were minimal and entered the United States roughly two years before the initial determination in this investigation. Given that time interval, and the considerable improvement in U.S. market demand between 1982 and 1984, these imports clearly had no continuing effect on the market at the time of the initial determination. Cumulation is thus inappropriate.3/

The Court states that cross-cumulation of LTFV and CVD imports was permissible under the prevailing law at that time. However, in my discretion I find it inappropriate in an investigation involving only LTFV imports to cross-cumulate when there have been intervening final negative determinations in LTFV proceedings involving the CVD imports at isssue. Any other conclusion could result in the incongruous finding of injury in a dumping proceeding based partially on imports explicitly found not to be dumped or not to be injurious from dumping. Imports from Brazil were specifically found either to be not sold at LTFV or, if sold at LTFV, not to be injurious.4/5/

3/ See e.g., Stainless Steel Sheet and Strip from Spain, Inv. No. 731-TA-164 (Final), USITC Pub. 1593 at 12 (Oct. 1984).

4/ See Cold-Rolled Carbon Steel Sheet from Brazil, Inv. No. 731-TA-154 (Final), USITC Pub. 1579 (Sept. 1984) (Brazilian Steel AD).

5/ Had I applied a so-called "contributing effects" test, cumulation of imports from Argentina and

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Thus, the so-called "contributing effects" test is only applicable for comparing the subject imports from Argentina with imports from Korea. Cold-rolled sheet is a highly fungible product. Nonetheless the differences in the history, trends and marketing of the imports are such that cumulation is inappropriate.

With respect to volumes, Korean imports were established in the U.S. market for several years prior to 1982, and grew rapidly in volume and market penetration in both 1983 and 1984. In contrast, imports from Argentina were so small as to be essentially not in the U.S. market in 1980 and 1981. Between 1982 and 1984 volumes increased only modestly in line with apparent consumption (actually declining as a share of imports), and were at a low and stable market penetration. Clearly, imports from Argentina did not have the same market presence and potential as imports from Korea, and the market would not perceive imports from Argentina as playing a

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Brazil would still have been inappropriate. After minimal import shipments in 1981 and 1982, Brazilian imports skyrocketed in 1983. Brazilian production capacity far exceeded Argentine capacity, and in fact unused capacity in Brazil far exceeded total Argentine capacity. The market would not perceive imports from Argentina as playing a supplemental role to imports from Brazil. In addition, overlap in the geographic markets supplied by Argentina and Brazil declined steadily from 1982 to 1984. When Brazilian imports plummeted in reaction to the investigation, imports from Argentina did not surge to fill the gap. Finally, information collected by the Commission show virtually no correlation in Brazilian and Argentine prices.

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supplementary role to imports from Korea. In addition, there was very little geographic overlap between Argentine and Korean markets in the United States.

With respect to price, price series for imports from Argentina and Korea show limited similarity, reflecting only the general influence of market price levels. A price series for the same item shows Argentine prices varying from roughly 5% less to 10% more than the comparable Korean prices.[6/]

I therefore find cumulation is inappropriate.

Causation

In making its determination concerning material injury the Commission considers among other factors the volume of imports, the effect of imports on prices in the United States, and the impact of imports on domestic producers of like products.[7/]

The volume of imports from Argentina was low, and the market penetration flat at under 1% during 1982-1984. With a highly fungible product like cold-rolled sheet, such low penetrations are still potentially injurious depending upon

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6/ Compare Cold-Rolled Carbon Steel Plates and Sheets from Argentine, Inv. No. 731-TA-175 (Final), USITC Pub. 1637 at A-25 (Jan. 1985) (Argentine Steel) with Cold-Rolled Carbon Steel Sheets from Korea, Inv. No. 701-TA-218 (Final), USITC Pub. 1634 at II-24 (Jan. 1985). (Korean Steel).

7/ 19 U.S.C. s. 1677(7).

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other market factors, such as demand conditions. In this instance, the growth of apparent domestic consumption of cold-rolled sheet from 1982 (when imports from Argentina essentially entered the U.S. market) through the third quarter of 1984 was in the range of 20 times the cumulative volume of imports from Argentina for that period.

With respect to pricing and price effects, the record supports the view of Argentina as an insignificant, passive and noninjurious participant. Quarterly price information on importers' sales collected by the staff show that in the beginning of 1984 (before any Commission action on the petition) Argentine prices were raised roughly 10-15%. Comparable data on domestic producer prices also show increases, but by smaller amounts.[8/] The Argentine price escalations occurred even though Argentina was merely maintaining a stable market penetration of less than 1%, and was actually losing position relative to other importing countries. This pricing behavior appears to be particularly passive in view of the price sensitivity (i.e., high cross elasticity of demand among suppliers) of cold-rolled sheet.

I therefore find nothing in the prevailing market conditions, or in the marketing of the very limited quantities of imports from Argentina, which would indicate that these imports were a cause of material injury to the domestic industry.

8/ See Argentine Steel at A-25.

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Further, I note that this decision is consistent with recent earlier determinations of the Commission concerning imports of cold-rolled sheet. In particular, the fact pattern is quite similar to that in the antidumping investigation involving Brazil in September 1984 which resulted in a unanimous negative determination.[9/] In addition, Korean imports had a considerably larger market presence in the subsidy case involving Korea (which was decided in the same month as the initial determination in the current investigation, January 1985) than Argentine imports had in the instant investigation. Nonetheless, in making an affirmative determination, only a minority of the Commission found material injury.[10/]

Threat

The major area of contention with respect to threat centered on the condition of the industry in Argentina. The Commission gathered data on shipments, capacity and utilization for the industry in Argentina in 1984 to supplement the information gathered in the initial investigation. This additional information generally reinforces my negative finding with respect to threat.

9/ See Brazilian Steel AD.

10/ See Korean Steel.

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In particular, the combined information gathered by the Commission shows an increased utilization of capacity between 1981 and 1984, with utilization rates approaching maximum levels in 1983 and 1984. By far the major market for the Argentine product was the home market. Home market demand grew strongly in each year from 1981 to 1984. At no time did shipments to the United States account for a substantial share of total Argentine shipments, and in 1984 exports to the U.S. accounted for less than 15% of the total. I therefore find no real and imminent threat of material injury to the U.S. industry to be derived from an analysis of the capacity and marketing of production of the Argentine industry.

Although the Court's discussion of threat primarily addressed the information concerning the industry in Argentina, for completeness I note that the indicators of threat related to importers' actions and market trends in the United States also provided no evidence of threat. In particular, Argentine import volumes were small and accounted for a stable share of apparent consumption, Argentine import pricing (as previously discussed) was not particularly aggressive, and though stocks in the United States rose, the increases were in line with shipment growth so that the domestic inventory to shipment ratio was stable.

I therefore find no threat of material injury.

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Views of Commissioner David B. Rohr

Having reviewed the record in this investigation and considering the opinion of the Court of International Trade (CIT) in *USX Corp. v. United States*, 1/ I determine that the domestic industry producing cold-rolled carbon steel plates and sheets is not materially injured nor is it threatened with material injury by reason of imports from Argentina determined by the Department of Commerce (Commerce) to be sold at less than fair value (LTFV). Although the domestic industry continues to experience material injury, I conclude, based upon an evaluation of the volume and price effects of Argentine imports in light of the conditions in the market, that it is not appropriate to cumulate the effects of Argentine imports with other imports, that such imports are not a cause of material injury to the domestic industry, and that such imports do not present a real and imminent threat of material injury to the domestic industry.

Background of this Remand Investigation

The petition upon which this investigation was based was filed on behalf of the domestic steel industry by United States Steel Corporation on February 10, 1984. 2/ It was one of a group of related petitions that alleged dumping of, and/or subsidies on, certain carbon steel products from Argentina, Australia, Finland, South Africa and Spain. On March 26, 1984, the Commission

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1/ Court No. 85-03-00325, Slip Op. 87-14 (Feb. 9, 1987).

2/ U.S. Steel Corporation changed its name to USX Corporation in 1986. In this opinion, I have referred to it variously as U.S. Steel and USX.

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made affirmative preliminary determinations that there was a reasonable indication of material injury to the domestic industry by reason of these imports. 3/

The South African investigations were terminated by Commerce following the withdrawal of the petitions on May 10, 1984. 4/ Commerce made a negative preliminary determination in the Australian countervailing duty (CVD) investigation, later confirmed in its negative final determination. 5/ Affirmative preliminary LTFV findings were made in the other investigations, including that involving Argentine products. Commerce made affirmative final LTFV determinations on December 13, 1984. 6/

Concurrent with the administrative proceedings, the U.S. government engaged in a series of discussions with all of the countries involved over possible voluntary restraints on steel exports to the United States. In mid-January 1985, immediately prior to the Commission's vote on the investigations involving the four countries, agreements were reached as to Australia, Finland, and Spain; the petitions withdrawn; and the investigations terminated. 7/ With the agreement of all the involved parties, including

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3/ Certain Carbon Steel Products from Argentina, Australia, Finland, South Africa, and Spain, Inv. Nos. 701-TA-212 and 731-TA 169 through 182 (Preliminary), USITC Pub. 1510 (March 1984).

4/ Certain Cold-Rolled Carbon Steel Plates and Sheets from Argentina, Inv. No. 731-TA-175 (Final), USITC Pub 1637 (January 1985) (*Argentine Steel*), Report at a-2 (citations to the Report refer to the original confidential report).

5/ *Id.*

6/ 49 F.R. 48488 (1984); *Argentine Steel*, Report at a-2.

7/ *Id.* at a-3.

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U.S. Steel, the Commission delayed its vote in the Argentine investigation to permit the continuation of the ongoing intergovernmental discussions. The Commission's vote was delayed through the period during which the Commission would traditionally prepare its opinion and was not finally made until January 28, 1985--the very day the determination was statutorily required to be delivered to Commerce.

The Commission then made its final negative injury determination and transmitted it that day to Commerce. 8/ U.S. Steel subsequently appealed that determination to the CIT. On February 9, 1987, Judge Restani of the CIT remanded the investigation back to the Commission for further proceedings, 9/ which resulted in the present determination and these views.

Scope of the Remand Investigation

My review of the *USX* opinion has left me uncertain about the proper scope of this remand investigation. Based upon the standard of review applicable to Commission decisions, 10/ I interpret the CIT's decision as a finding that there was not substantial evidence on the record to support the Commission's decision. It is not clear, however, whether the CIT's decision was the result of the Commission's failure to explain adequately its determination or whether the determination itself was "unsupportable." Similarly, it is not clear whether the CIT's criticism of the determination was a requirement for the Commission to "reopen" the record to conduct an

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8/ *Argentine Steel*, Views of Chairwoman Stern, Vice Chairman Liebeler, Commissioner Lodwick, and Commissioner Rohr (Original Views) at 3.

9/ USX, Slip Op. at 32.

10/ 19 U.S.C. 1516a(b)(1)(B).

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additional investigation, and, if so, the scope required for such an investigation, whether the CIT contemplated that the Commission should make a new determination, or whether the Commission need only provide additional explanation of its original determination.

I conclude that this remand focuses on three substantive issues. The first whether, given the nature of the imports and the market, the effects of Argentine imports should be cumulated with the effects of imports of any other country. The second is whether Argentine imports, either alone or on a cumulated basis with other imports, are a cause of the material injury being experienced by the industry. The third issue is whether Argentine imports pose a real and imminent threat of material injury to the industry. 11/

The Commission reopened the record of the investigation for the limited purpose of seeking additional information and argument relevant to these three substantive issues. In making my new determination, I reviewed this new information, as well as the information originally obtained in the 1984 investigation. I believe that the CIT's finding that the Commission's decision was not supported by substantial evidence was due to a failure by the Commission to explain adequately that decision rather than due to the inadequacy of the evidence or of the determination. In looking at the new information, I find that it is essentially cumulative of the information obtained originally and confirms my initial determination.

Cumulation

In my initial views in this investigation, I noted, along with

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11/ Nothing in the CIT's remand order affects my original findings with respect to like product, domestic industry, or the condition of the domestic industry. I have readopted them for purposed of these views.

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Commissioner Lodwick, that cumulation was inappropriate. 12/ I stated that import trends for Argentina were different from those of imports from other countries and that data on lost sales and lost revenue indicated that Argentine imports did not contribute to any injury that was being suffered by the domestic industry. 13/ This was, as the CIT observed, an application of the contributing effect test applicable to Commission pre-1984 decisions on cumulation. 14/

In *USX*, the CIT recognized the validity of the contributing effects test under pre-1984 law but criticized our application of that test. 15/ It stated that our articulation of the test led to "a process of circular reasoning that renders cumulation a vestigal part of the causation analysis." 16/ This circularity arose, the CIT asserted, from our use of data on lost sales and lost revenue as a basis for concluding that imports had no "contributing effect," as well as in our causation analysis.

I recognize that the impression of circular argumentation can be drawn from our use of lost sales and lost revenue data in the context of both cumulation and causation. My analysis, however, is circular neither in theory nor as applied to this investigation. It must first be understood that cumulation and causation are, by their natures, related concepts. Both are

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12/ My discussion of cumulation below is a discussion of the principles of cumulation as they existed prior to the 1984 law. This is not the analysis mandated, or which I use, under the current law.

13/ *Argentine Steel*, Original Views at 8 n.30.

14/ *USX*, Slip. Op. at 10-11.

15/ *Id.* at 11-16.

16/ *Id.* at 13.

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concerned with the relationship between imports and, for cumulation, other imports or, for causation, the condition of the domestic industry. 17/ Both involve an examination of the nature of the imports and the nature of the market for the products.

In my causation analysis, I examine the record of an investigation for facts concerning the marketing of the imports that indicates that they impact adversely on the products sold by the domestic industry. In applying the contributing effect test, I look for evidence in the marketing of the imports that shows that the effects of imports are complementary. The contributing effects test requires a finding that market conditions are such that the imports from a particular country *would be* a cause of injury, were their volume or price effects greater, and that, when considered along with other imports that have the same effects, the overall effect of the combined imports is sufficiently great to be a cause of injury. Causation exists, once the contributing effects test is applied, when the effects of imports from country A *plus* the effects of imports from country B *plus* the effect of imports from country C are sufficient, *when added together*, are a cause of injury. The test itself requires positive evidence that the relationship between the imports was *"plus"*, that the effects were additive, rather than that the imports were merely competitive.

In this analysis, lost sales and lost revenue information is critical because the information collected is our most important source of information about the actual marketing of the products subject to the investigation. 18/

17/ *See USX*, Slip Op. at 10 n.5.

18/ *See* Supplemental Report to the Commission, Information Developed in Response to the Court of International Trade's Remand of Investigation No. 731-TA-175 (Final), Cold-Rolled Carbon Steel Plates and Sheets from Argentina (Supp. Report) at A-10 to A-15..

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My reference to lost sales and lost revenue in my initial views was made in this context. I saw nothing in the marketing of the Argentine imports that suggested that their effect was additive to the effect of other imports.

In the context of this remand, I have reconsidered my conclusion on cumulation. Upon reconsideration, I again find that cumulation is inappropriate. Again, the principal basis for my conclusion is that imports from Argentina did not contribute to any injury being suffered by the domestic industry. Before explaining this conclusion, I must discuss certain legal issues that also affect cumulation.

USX argued that imports from five countries were possible candidates for cumulation with the Argentine imports in this investigation. These five were Spain, South Africa, Brazil, Korea, and Mexico. 19/ Of these, several must be excluded for strictly legal reasons, regardless of whether they might otherwise be found to "compete" or have any contributing effect. Mexico, which was initially subject only to a countervailing duty investigation, had the petition against it withdrawn by U.S. Steel in April 1984. It was, therefore, not an appropriate subject for cumulation. With respect to South Africa, Brazil, and Spain, antidumping investigations with respect to these imports had terminated prior to the Commission final determination either as the result of a negative determination or the withdrawal of the petition. 20/ However, the imports from several of these countries may be considered as possible candidates for cumulation as a result of prior countervailing duty investigations. These are: Brazil, subject to a CVD order issued in June

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19/ Remand Memorandum of USX Corp. at 9 (March 9, 1987).

20/ Supp. Report at A-3.

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1984; Korea, subject to a CVD order issued in February 1985; South Africa, subject to a CVD order since September 1982; and Spain, subject to a CVD order since January 1983. 21/

I believe that cumulation with South Africa and Spain is also legally impermissible. The unfair trade laws require me, in order to reach an affirmative determination, to find a causal nexus between material injury and *currently* unfairly traded imports. I believe that the unfair trade laws also require me to assume that imports that are already subject to dumping or countervailing duties are being "fairly traded" once the duties are in effect. I believe this is a statutory presumption required by the laws. Because imports subject to an outstanding orders are not unfairly traded, they cannot logically be combined, in a decision made after the date of the order, with current unfairly traded imports as a cause of injury.

An exception to this general rule may be seen in the Commission's practice of allowing cumulation with imports subject to *recently* issued orders. 22/ The basis for this exception is a practical recognition of market reality. Cumulation is concerned with imports that are a current cause of material injury. In the case of recently issued orders, the imports during the time at which they were unfairly traded can be reasonably viewed as having current effects on an industry. The two to three years since the imposition of the orders in the South African and Spanish investigations make them very remote in time. 23/ I conclude, based on this remoteness in time, that

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21/ *Id.*

22/ *See* Carbon Steel Wire Rod from the German Democratic Republic, Inv. No. 731-TA-205 (Preliminary), USITC Pub. 1607 at 8 (Nov. 1984).

23/ *See* Stainless Steel Sheet and Strip from Spain, Inv. No. 731-TA-164 (Final), USITC Pub. 1593 at 12 (Oct. 1984)(cumulation inappropriate; 16 months since dumping order against France and Federal Republic of Germany.)

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neither the South African nor the Spanish unfairly traded imports were having any current effect on the industry.

This leaves Brazilian and Korean imports, as a result of recently issued CVD orders, as the only remaining candidates for cumulation in the present dumping investigation. Such cumulation raises the issue of the legality of cross-cumulation under the separate dumping and CVD statutes. I stated my views with respect to cross-cumulation in *Certain Fresh Cut Flowers from Canada, Chile, Colombia, Costa Rica, Ecuador, Israel, and the Netherlands (Fresh Cut Flowers)*. 24/ As I stated in that opinion, I do not believe that cross-cumulation is mandated under the 1984 Act. I do not believe it is mandated under the prior law. I note, as the Court itself did, that there is no example in the history of the Commission of cross-cumulation. Because cumulation existed, prior to the 1984 law, merely as a matter of Commission practice and discretion, and there is no example of cross-cumulation in that practice, I fail to see a justification in such practice for doing so now. However, as in *Fresh Cut Flowers*, I will cross-cumulate if required to do so by the Court. In this investigation, however, I do not believe that I am faced with a situation in which I am required to cross-cumulate. My conclusion, explained below, that there is no contributing effect by Argentine imports renders the question of cross-cumulation moot.

The first factor that affects my decision as to contributing effect is the difference in import trends between Argentine and other imports. 25/ While Argentine imports retained an essentially flat market share, imports from Brazil and Korea show sharply increasing market shares during the period

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24/ Inv. Nos. 701-TA-275 through 278 and 731-TA-327 through 331 (Final 1987).

25/ Supp. Report at A-7, table 3.

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of investigation. 26/ It supports a conclusion that, while the Brazilian and Korean imports were being imported to fill gaps in the market created by restriction on other supply, Argentine imports were being imported in a traditional manner by traditional importers.

The CIT stated that the flatness in Argentine market share may have been a result of the initiation of the present investigation. 27/ This is, of course, a possibility, although there is no evidence on the record to support such a conclusion. More important, however, is the question whether, if true, such a conclusion would be relevant to the cumulation analysis.

Cumulation is concerned with the current "hammering effect" that imports actually present in the market, as a result of how they were marketed, had on the industry rather than with whether they might have had a hammering effect if conditions, e.g. their volume, price. or marketing, had been different. To be sure, if the totality of the evidence suggested that cumulation was appropriate, I would not consider a sharp reduction in import volumes during the pendency of an investigation that appeared to be related to its initiation to negate that finding. However, that is not the case here. While the question of what might have happened in the absence of the investigation would be relevant to the issue of whether Argentine imports pose a threat of

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26/ I note that Brazilian imports decreased in the interim 1984 period, further suggesting different marketing of Brazilian and Argentine imports. Commissioner Lodwick has also raised an important point relevant to cross-cumulation with the Brazilian imports. He notes that a dumping investigation involving Brazil, four months prior to *Argentine Steel*, resulted in a finding that the Brazilian imports were noninjurious. Cold-rolled Carbon Steel Sheet from Brazil, Inv. No. 731-TA-154 (Final) USITC Pub. 1579 (1984) (*Brazilian Steel*). *See* pp. 66-67, *supra*. *Cross-cumulation would thus require that these imports, explicitly found to be noninjurious only four months prior to this determination, to be used to support an injury finding as though they were injurious, a finding no Commissioner, pre-1984, would have contemplated.*

27/ *USX*, Slip Op. at 13 n.8.

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material injury, I do not find it relevant to the present consideration of cumulation. 28/

A second factor that I find relevant to an analysis of the contributing effect of Argentine imports is price. Again, I do not find that there is a sufficient similarity in the pricing pattern of Argentine, Brazilian, and Korean imports to find that they all contributed to an injurious effect on the domestic industry. 29/ At best, the data show the general influence of the general price level for cold-rolled carbon steel sheet on individual prices, rather than the correlated pattern of import prices I would expect if imports from various sources were having a hammering effect on domestic prices. 30/

A third set of factors relevant to the issue of cumulation relate to the importers of Argentine steel subject to this investigation. Importers of the Argentine products are not the same importers that account for any substantial portion of the imports from Brazil or Korea. 31/ In fact, geographically, there was very little overlap between Korean and Argentine markets. 32/ The overlap is somewhat greater with Brazilian imports but there remains a substantial difference in concentration. An examination of importers of Argentine steel also indicates that there was little increase in the number of importers of this product during the period of the investigation. 33/ The

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28/ In the context of threat, its relevance would be seen in its effect on Argentine production, export, and inventory data.

29/ Supp. Report at A-8 to A-11.

30/ The prices of Brazilian, Korean, and Argentine steel imports show very little correlation. *Id.* at A-10 to A-11, Figure 1.

31/ *Id.* at A-8.

32/ *Id.* at A-9, table 4.

33/ Based on an analysis of the Net Importer File provided by the U.S. Customs Sevice.

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conclusions suggested by this data are that the marketing of the products was different--geographically, by who is doing the marketing, and in the aggressiveness of that marketing. 34/

The essentially passive role of Argentine imports in the market is further supported by market information obtained in our lost sales/lost revenue investigations. 35/ What is significant is that this information provides no basis for concluding that Argentine steel was being aggressively marketed in competition with other imports. Rather, it suggests that Argentina, a traditionally marginal supplier in the market, 36/ was maintaining its traditional purchasers. I find no basis for finding any contributing effect in these fact. I have therefore concluded that cumulation is inappropriate.

Causation

The first element of the Commission's causation analysis involves the volume of imports. The Court criticized our bald reliance on the flat import penetration ratio without any further explanation of the significance of volume, particularly in light of the increasing absolute volume of imports. 37/ This criticism is wellfounded, but only to the extent that it

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34/ Aggressiveness is merely a convenient term I am using to refer to the head-on competition in the market for sales between the various imports and between imports and the domestic product. The Commission cannot obtain information on all considerations relevant to each sale of the imported and domestic products. The aggressiveness with which products are sold provides us with one basis on which to generalize the data that we are able to collect to the market as a whole.

35/ *See* Supp. Report at A-10 to A-15.

36/ Argentine imports were, in fact, absent from the market for a two year period in 1980 and 1981.

37/ *See USX*, Slip Op. at 6-7.

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reflects a failure in our explanation of the situation in the marketplace. The volume of imports is important, but it is the significance of those imports that is more critical to my analysis. The first step in ascertaining the significance of imports is to examine their relationship to the market, a relationship that is seen in market shares. The market share data show that Argentine imports were growing no faster than the overall growth in the market. 38/ Although not determinative, this is clearly a very important fact.

The significance of the market shares must also be evaluated on a case-by-case basis. The CIT noted that the Commission made an affirmative determination in an investigation of Spanish steel imports two years before the decision in *Argentine Steel*, even though the market share of the Spanish imports in that investigation was lower than the market share of Argentine imports in this investigation. 39/ While I am somewhat concerned with a requirement that I must distinguish my views from those of any other Commissioners in past investigations, particularly where I was not a Member of that Commission, there are clear distinctions between the present investigation and the *Spanish Steel* investigation that render the market shares of different significance.

First, what I suspect would have been highly significant to the Commission in *Spanish Steel* was that Spain was a new supplier to the U.S. market, aggressively seeking market share, even though its exports were still small. This is a significant difference between *Spanish Steel* and

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38/ This fact is illustrated by the level import penetration ratios for Argentine imports. Supp. Report at A-7, table 3. As Commissioner Lodwick notes, the growth in consumption far outstripped the total volume of Argentine imports between 1982 and 1984.

39/ *USX*, Slip Op. at 7-8 (referring to Cold-Rolled Carbon Steel Sheet from Spain, Inv. No. 701-TA-157 (Final), USITC Pub. 1331 (1982) (*Spanish Steel*)).

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the present investigation. 40/

Even more significant is the difference in the condition of the domestic industry in *Spanish Steel* and the present investigation. In *Argentine Steel*, the Commission majority stated that the condition of the domestic industry was improving, although it was still experiencing material injury. 41/ This is a very different conclusion from that reached by the Commission in *Spanish Steel*. In *Spanish Steel*, the Commission noted that the industry, in 1982, was in a period characterized as an "accelerating downturn". 42/ The Commission's analysis must be based on what is actually happening in the market, *at the time it makes its determination*. Therefore, causation, in 1984 in the context of an improving industry, will naturally be analyzed differently than causation in 1982.

In an investigation some four months prior to the Commission's investigation in *Argentine Steel*, the Commission reached conclusions remarkably similar to those in *Argentine Steel*. That investigation involved imports of this same product from Brazil. 43/ In that investigation, the 1983 market share of the sole Brazilian producer subject to the dumping investigation did not differ significantly from the present Argentine market share. The Commission made a negative determination, as it did in *Argentine Steel*. 44/ The Commission stated:

40/ As I stated above in my discussion of cumulation,, Argentine steel was not being aggressively marketed.

41/ *Argentine Steel*, Original Views at 5.

42/ *Spanish Steel*, at 20.

43/ *See Brazilian Steel, supra*, n.26,.

44/ Supp. Report at A-6 n.4.

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> "It is our view that, absent other significant evidence of causation, Usiminas' market penetration is insufficient to support a finding of material injury by reason of LTFV imports from Brazil *in the context of the current conditions facing the domestic industry*." 45/

In *Brazilian Steel*, Commissioner Eckes, a Member of the Commission that decided *Spanish Steel* in 1982, felt it important to distinguish the two investigations:

> Therefore, as the conditions of trade improve, the impact of small import volumes and penetration upon the performance of the domestic industry lessens accordingly. 46/

I believe this statement to be an eminently reasonable expression of a fundamental principal of Commission analysis. The significance of market shares depends upon the condition of the industry. In this investigation, I do not find "significant other evidence of causation" that would negate the conclusion of no causation to be drawn from this evidence. Thus, my conclusion here is not inconsistent with that of the Commission in *Spanish Steel*. Further, it is explicitly in accord with that reached by the Commission in *Brazilian Steel* only four months prior to the original determination in this investigation.

The statute also requires the Commission in its causation analysis to consider the price effect of the imports. The Commission majority noted in its original views that the Commission had confirmed several instances of underselling. 47/ It is obvious that the Commission majority did not place great weight on this evidence, but it is not clear from the opinion why we did not give them greater emphasis. Price comparisons will be better and entitled

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45/ *Brazilian Steel* at 7 (emphasis added).

46/ *Id.* at 6 n.13.

47/ *Argentine Steel*, Original Views at 6.

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to greater weight when: (a) there are a greater the number of comparisons; and (b) the transactions are more representative, i.e. there are many transactions in each comparison, there are uniform conditions, such as geography and purchasers, and there are more nearly identical products being compared. In this investigation, there is a relatively fungible product, but one for which purchasers have identified both product and quality differences. 48/ Moreover, in this investigation, there are relatively few comparisons and a limited number of transactions used in each comparison.

These limitations do not render the price comparisons completely invalid. or useless. 49/ I do believe that it is within my discretion to limit the amount of weight I accord to them. 50/ I do not find them sufficiently probative to outweigh the negative inferences to be drawn from the limited volume and market penetration of these imports.

Finally, I look closely at the lost sales and lost revenue allegations and the information about market conditions to be gained from our investigation of them. There were a total of five lost sales and two lost revenue allegations made. The Commission investigated three of the lost sales

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48/ Supp. Report at A-12. One purchaser stated that its traditional domestic supplier does not routinely produce the particular size steel sheet that it is able to purchase from Argentina.

49/ Respondents have criticized our pricing data, but I find they accurately reflect the information which was gathered from the marketplace.

50/ *See* Maine Potato Council v. United States, 613 F.Supp. 1237, 1244 (1985). *See also* S. Rep. 349, 96th Cong., 1st Sess. 88; and H.R. Rep. 317, 96th Cong., 1st Sess. 46 (1979). Obviously, the strict time limits within which the Commission operates, as well as the particular facts of each investigation, limits the quality and quantity of information available to us. For example, in this investigation, although the Commission obtained data on most transactions involving Argentine steel there were few transactions, and the likelihood on unique factors affecting them is greater then if there were many tansactions averaged out in our data. I, of course, keep such factors in mind in assessing the data.

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allegations and neither of the lost revenue allegations in the initial investigation. We were able to pursue the remaining allegations in this remand investigation. 51/

My conclusions about these allegations and the market conditions include the following. First, there was little direct competition between Argentine and domestic steel in the relevant period. Argentine steel was not being marketed aggressively in competition with the domestic product. Moreover, most of the allegations, with the exception of some very small tonnages, were not confirmed or involved much smaller amounts or very different prices than were alleged. I find nothing in the market conditions prevailing at the time to suggest that the limited quantities of Argentine steel that were imported were marketed in such a manner as to cause material injury to the domestic industry.

Threat

Finally with respect to the Commission's original determination that Argentine imports did not threaten the domestic industry with material injury, the CIT criticized the fact that the Commission did not have 1984 production and capacity data for the Argentine industry. 52/ It stated that the staleness of the data compromised the threat determination in light of the alleged volatility of the Argentine industry and petitioner's information suggesting substantial declines in Argentine production in 1984.

51/ The factual information about these allegations is discussed in the Supp. Report at A-10 to A-15.

52/ *USX*, Slip. Op. at 27-30.

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The Commission has supplemented its data with 1984 Argentine production data. 53/ Rather than showing that the Commission's initial determination was inaccurate, full year 1984 data confirms our earlier findings. First, the "volatility" of the Argentine data appears to me to be a rather consistent increase over time in production and capacity utilization. While there was a very small drop in capacity utilization in 1984, I find the magnitude of this drop to be insignificant. At the same time, Argentine domestic shipments increased during the period of investigation, contrary to the information submitted by petitioner. 54/ As a percentage of total shipments of the two firms supplying the U.S. market from Argentina, exports to the United States increased from 1981-83, never accounting for a large share of shipments, and then decreased in 1984 to 1982 levels.

I also considered the generally available public information submitted by petitioner concerning Argentine steel production and the markets for Argentine steel other than the United States. It provided useful information concerning overall Argentine steelmaking production and capacity and general international market trends for steel. It provided insufficient evidence to refute the conclusion to be drawn from the data collected specifically on the products under investigation by the Commission, which demonstrate the lack of a real and imminent threat to the industry from Argentine imports.

I conclude, therefore, as I did in my original determination, that Argentine imports do not present a real and imminent threat of material injury to the domestic industry.

53/ Supp. Report at A-1, table 1.

54/ *Id.*

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VIEWS OF COMMISSIONER ECKES

Pursuant to the Court's instruction, I have reviewed additional information developed during the remand phase of this investigation and have determined that the domestic industry is materially injured by reason of LTFV imports from Argentina. Unlike my colleagues, I find the information in the record compels now more than ever an affirmative determination. In my view the majority's negative determinations, both in the final investigation and the court remand, were not supported by substantial evidence and were reached in a manner contrary to law.

The critical analytical issue posed in this remand is causation: Are LTFV Argentine imports of cold-rolled carbon steel plates and sheets a cause of material injury to the domestic industry producing the like product? The presence of material injury is not an issue here. In its initial determination the Commission majority, including this dissenting Commissioner, unanimously agreed on "like product," and the definition of the domestic industry. The majority also agreed that the domestic industry is materially injured. Consequently, in these views it is unnecessary to restate my findings on those issues. Nor, having found that LTFV imports are a cause of material injury, is it necessary for this Commissioner to comment extensively on the existence of a threat of material injury or the appropriateness of cumulation.

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As the remanding Court noted, the ITC is required to consider three factors when examining the causal connection between imports and material injury. These are: (1) the volume of imports, (2) the effect of imports on prices of the like product; and (3) the impact of imports on domestic producers of like product.

(1) Volume of Imports: Based on the record in the initial determination, it is clear that Argentine imports rose from virtually zero in 1981 to 130,000 tons in 1983. Argentine imports first entered the U.S. market in 1982 when the domestic industry's performance bottomed. Partial year data for 1984 also show an increase in imported tonnage over the comparable period in 1983.

In terms of market share, Argentina, acquired nearly 1 percent of a shrinking U.S. market in 1982, its first year in the U.S. market. Then, as the domestic consumption began to expand again -- through 1983 and the first nine months of 1984 -- Argentine imports maintained their newly claimed market share.

From my point of view, the import figures and market share mask a significant surge quality. During the remand investigation, the Commission received quarterly export data, and learned that most of the 1983 Argentine exports destined for the United States were shipped during the last half of 1983.1/ Thus, from one perspective, exports of cold-rolled carbon steel plates and sheets from

1/ See submission by Argentine respondents dated March 4, 1987, regarding Argentine exports to the U. S.

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Argentina were nearly 2 percent of apparent U.S. domestic consumption during the last half of 1983. Viewed in this manner, the Argentine imports were hardly stable, or insignificant.

About the significance of this small volume and market share, individual Commissioners appear to differ. My own approach, as the Court noted, was first articulated in "Certain Carbon Steel Products from Spain."1/ There, in majority views explaining an affirmative determination, the Commission focused on the inherent price sensitivity and fungibility of cold-rolled steel products and observed that "the impact of seemingly small import volumes . . . is magnified in the marketplace." I believe that my conclusion is consistent with my analysis in "Certain Carbon Steel Products from Spain." That opinion, incidentally, provided the analytical framework for my analysis in subsequent steel products investigations in which I dissented from my colleagues' determinations.2/

But, the majority in this investigation appear to have turned their backs on the majority analysis in Spanish

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1/ Certain Carbon Steel Products from Spain, Inv. Nos. 701-TA-155, 157, 158, 159, 160, and 162 (Final), USITC Pub. 1331 (December 1982) at 16-17.

2/ See Stainless Steel Sheet and Strip from Spain, Inv. No. 731-TA-164 (Final) USITC Pub. 1593 (October 1984) at 17 (hereinafter "Stainless Steel from Spain"); See Certain Carbon Steel Products from Austria and Sweden, Inv. Nos. 701-TA-225, 227, 228, 230, and 231 (Final) and Inv. No. 731-TA-219 (Final), USITC Pub. 1759 (September 1985) at 29 (hereinafter "Carbon Steel Products from Austria and Sweden"); See Carbon Steel Structural Shapes from Norway, Inv. No. 731-TA-234 (Final) USITC Pub. 1785 (November 1985) at 13 (hereinafter "Structural Shapes from Norway").

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steel and offered in its place no coherent analytical substitute. The conclusory, incomplete nature of the majority's initial views in this remand is part of a disturbing pattern of Commission disregard for the statutory mandate. That mandate is to explain the significance of import volumes in terms of the relevant conditions of trade for a particular industry and to respond to specific statutory criteria.1/

To me the statute is unequivocal on these matters. It requires the Commission to determine whether the import volume is significant. Imports are not required to be increasing either in an absolute sense or relative to production or consumption trends. Similarly, the legislative history reinforces the unacceptability of arithmetic analysis:

> For one industry, an apparently small volume of imports may have a significant impact on the market; for another, the same volume might not be significant.2/

In light of the legislative history, it would appear to be illegitimate to employ arbitrary proxy tests, such as the presumption that imports cannot cause material injury unless they reach a 2.5 percent market share threshold. Nonetheless, some of my colleagues regularly assert such a presumption. They apparently assess import volume according to an arbitrary standard based on some

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1/ See my views in "Carbon Steel Products from Austria and Sweden" at p. 31, and "Structural Shapes from Norway" at p. 19.
2/ H.R. Rep. 317, 96th Cong., 1st Sess. 46 (1979).

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perception of appropriate import patterns across a spectrum of unrelated products.1/ Their practice appears to contradict the statutory requirement that the Commission assess the impact of subject imports on the domestic industry producing the like product.

For further discussion of this issue and related concerns on Commission discretion and the obligation to explain the basis for Commission determinations, I refer generally to my views in "Certain Ethyl Alcohol from Brazil," Inv. No., 701-TA-239 (Final) and 731-TA-248 (Final) USITC Pub. 1818 (March 1986), pp. 40-53, in particular footnotes 49 and 52.

(2) Effect of Imports on Prices: In this final investigation I observe a compelling link between imports and domestic pricing, sufficient to establish that Argentine imports are a cause of material injury. Although underselling is a traditional measure, used in numerous Commission investigations and discussed in numerous Court reviews, my colleagues offered no

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1/ Thus, I find reference to low levels of imports in other investigations, such as potassium chloride or wire rod to be irrelevant to the causation analysis regarding imports of cold-rolled sheet. See Respondent's remand brief to the Commission at 7-10.

In one recent appeal, the plaintiff argued that because the ITC had made affirmative determinations based on lesser degrees of import penetration in other cases, it should do so in that instance. The Court said: "The problem with the plaintiff's position is that the Commission must make its determinations on a case-by-case basis. . . . While factual similarities with regard to dissimilar industries may be probative evidence, they do not require similar conclusions." Maine Potato Council v. The United States 613 F. Supp. 1237, 1244, (CIT 1985), footnote 7.

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explanation in their initial views why they concluded that consistent underselling should be disregarded in the present case.1/

1/ Perhaps it is appropriate to note that in other investigations, some Commissioners have asserted that price underselling is not dispositive on the issue of causation. See, again, my dissenting views in "Certain Ethyl Alcohol from Brazil," 43-44.

One Commissioner recently discussed the irrelevance of "Underselling" and "Lost Sales" analysis in memorandum CO65-K-12, dated March 24, 1987, drafted as part of the Commission's consideration of the Commission's supplemental report in this investigation. In part, my colleague observed, "In my view, underselling as determined by the Commission staff does not generally have any relationship to price undercutting or price depression. The data gathered by the staff simply report particular transaction prices at particular points in time, all of which says nothing about the dynamics of prices in the market."

Further, this Commissioner continued: "Yet lost sales are not mentioned in Title VII and, in my view, the presence or absence of lost sales almost never says anything about the presence or absence of a causal relationship between dumped imports and material injury to the domestic industry."

Of course, I disagree with these observations. It is often difficult to ascertain the relevant conditions of trade based on information required by the statute, such as import volumes, underselling and lost sales,(See footnote 1 on p. 8) but the statute exacts this fact-finding effort from each Commissioner. Reliance on such academic aides as elasticity analysis, proxies, or presumptive tests cannot serve as substitutes for objective, dispassionate assessment of the facts developed in each investigation. Nor can such theories rebut the facts of real world competition. As the ITC's Director of Economic's notes in EC-J-010 (Jan. 7, 1986) at 9, elasticity estimates "are usually not very reliable, are seldom statistically significant, and only rarely are sufficient price data available to allow empirical estimates of elasticities of substitution at the product level."

Reliance on elasticities would seem to be another instance where ". . . a theoretical model, based on a set of assumptions, may be outweighed by real world data." Maine Potato Council v. the United States, 613 F. Supp. 1237, 1244 (CIT 1985), footnote 8.

In the context of this investigation, perusal of the "Supplemental Analysis by the Office of Economics," (INV-K-029) illustrates the inconclusive, theoretical underpinnings of this approach. For example, the final footnote in that section points out the wide range of variables available to those constructing elasticity models.

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During the remand investigation, Commission staff developed more information demonstrating the impact of Argentine imports on domestic prices. The new data show clearly that domestic producers lost sales to Argentina for reasons of price and also demonstrate that domestic producers were compelled to lower their prices in order to avoid losing other transactions.

Purchasers of cold-rolled carbon steel sheets reported transaction prices permitting the Commission to make quarterly comparisons of domestic and import prices paid steel service centers located in three market areas--Chicago, Houston/New Orleans, and New York/Philadelphia. During 1983 and 1984, imports from Argentina undersold the domestic products in each of the 13 instances where transaction price comparisons are available, by margins ranging from 5 to 14 percent. More than one-half of the 1983 imports from Argentina entered through Chicago. In the Chicago market, imports of a representative cold-rolled product in the domestic market undersold the domestic product by significant margins during 1983, the period in which the majority of Argentine imports entered through Chicago.

Information gathered in this investigation on lost sales and lost revenues confirms the fungibility of steel products and how this fungibility is reflected in price

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sensitive purchasing decisions.1/ In the initial record of this investigation, there was one confirmed allegation of lost sales where the domestic firm acknowledged buying the Argentine product as alleged, but could not verify the domestic price.2/ On remand, the Commission investigated another alleged lost sale in 1982, the year that Argentina first entered the domestic market. Although the purchaser was unable to confirm the details of the allegations, it did confirm purchasing Argentine sheets during that time period. The allegations did not differ from the buyer's perception of the quantities and prices during that time.3/

Another purchaser located in a major market for Argentine steel, while failing to confirm the alleged lost sale, did confirm its policy of buying commodity steel to

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1/ While the term "lost sales" does not appear in Title VII, 19 U.S.C. 1677(7)(C)(iii)(I) does require the Commission to evaluate a "decline in . . . sales" as part of its impact analysis. Nonetheless, the Court of International Trade has upheld the traditional Commission practice of using lost sales analysis as a signal of imports impacting the domestic industry. The Court says: "Although the Commission must assess the impact of imports on the domestic industry, the Commission may make such an evaluation on whatever rational basis it chooses. Here the Commission used lost sales to determine if sales were lost due to price factors, an important test of injury." Maine Potato Council v. The United States 613 F. Supp. 1237, 1245, (CIT 1985)

More to the relevant point of such inquiry in this remand, the Court continued: "Sales lost due to underpricing is an important test of injury in the case of fungible goods." Gifford Hill Cement Company v. U.S., 615 F. Supp. 577, and 586 (CIT 1985).

2/ Commission Report at a-27.

3/ Supplemental Commission Report, section on "New lost sales information."

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certain specifications without regard to mill source, foreign or domestic. This buyer claimed its vendor certified product specifications, but the buyer as a matter of practice does not know or require the origin of the steel.1/

Information developed on lost revenue allegations illustrates the imprecise nature of company records on pricing information. One purchaser claimed not to keep records of competing bids after placing an order, so that specific confirmation of depressed prices on a transaction is not possible. However, the purchaser noted that if the domestic producers are to be competitive they must quote a price close to the market price cluster established by import prices and domestic prices. This buyer also confirmed that all of the imported product is viewed as commodity cold-rolled sheet, a satisfactory substitute for domestic product in a given market.2/

In summary, anecdotal information developed on lost sales and revenue confirms the analysis of cold-rolled sheets and plate as a fungible commodity product sensitive to the impact of unfairly traded imports. The Commission knows from its extensive steel investigations that steel products are fungible and price sensitive. As such, they resemble a commodity: a small change in price can have a significant impact on purchasing decisions and sourcing

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1/ Id.
2/ Supplemental Commission Report, section on "New lost revenues information."

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patterns. Moreover, imports of cold-rolled sheets and plates from all sources compete for the same customers -- steel service centers -- and have a simultaneous impact on the U.S. market. From the lost revenue information collected, the Commission has learned that customers view pricing as critical to their competitiveness, and they source accordingly. In a weak market with intense competition from a diversity of importers, the domestic industry had to discount list price to meet a narrow cluster of import prices.

In such a pricing environment, I believe it is also appropriate to consider the magnitude of the dumping margins. The Department of Commerce found margins between 30.3 and 242.5 percent on sales during a period of intense price competition in the domestic market. To me, it is apparent that such dumping practices helped Argentine imports enter the U.S. market and maintain newly acquired market share.1/

(3) Impact of Imports on Domestic Producers of Like Products: Basic to my analysis in "Certain Steel Products from Spain," and other steel-related investigations, is

1/ Margins in this investigation were 30.3 percent for one producer and 242.5 percent for the second producer; the weighted average for all other producers was 122.3 percent; See Certain Carbon Steel Products from Spain, Inv. Nos. 701-TA-155, 157, 158, 159, 160, and 162 (Final), USITC Pub. 1331 (December 1982), at 14; See also Hyundai Pipe Co., Ltd., et. al., v. United States, Slip Op. 87-18 (CIT 1987).

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the belief that an effort to assess the impact of imports on the domestic industry must afford careful consideration to the conditions of trade. And, a critical aspect of this analysis is the ability of the domestic industry to perform at levels not resulting in harm that is "immaterial, unimportant, or inconsequential."

In the initial investigation I joined with my colleagues in observing that there were "indications of recovery" to the industry producing cold-rolled carbon steel plates and sheet in 1984. Perhaps some further explanation is needed at this point, because others may clutch this phrase to argue that small quantities of imports which may be injurious in depressed circumstances may be noninjurious when the domestic industry experiences some recovery.

Indeed, such a situation did occur in "Cold-Rolled Carbon Steel Sheet from Brazil," a decision reached a few months before the Argentina determination.1/ In my own negative determination on the Brazilian case I focused in part on the domestic industry's economic improvement and observed that ". . . as conditions of trade improve, the impact of small import volumes and penetrations upon the performance of the domestic industry lessens accordingly." I emphasize the phrase "in part," because

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1/ Cold-Rolled Carbon Steel Sheet from Brazil, Inv. No. 731-TA-154(Final), USITC Pub. No. 1579 (September, 1984), in particular footnote 14 at 6.

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in the Brazilian case my analysis of the condition of the domestic industry was only one aspect of my overall analysis of the relevant conditions of trade. My complete assessment of the Brazilian import patterns cited the limited information on pricing trends, underselling, lost sales and the low LTFV margin as failing to indicate that unfair Brazilian imports were a cause of material injury. To summarize, my analysis in the Brazilian case does not suggest similar import volumes would always result in a negative determination when such imports have a demonstrated impact on the industry's performance even though the conditions of trade are improving.1/

In the present Argentine case one simply cannot make a credible claim that small import volumes are noninjurious on the grounds that conditions are improving. To try is to ignore the devastation imports have imposed on the domestic steel industry and its beleaguered position in the marketplace. Six months before the Argentina decision the Commission unanimously found that the domestic industry producing sheet and strip was seriously injured. As the Court knows, in making its Section 201 determination of serious injury, the

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1/ In my initial views in this investigation, I provided a complete explanation of the bases for my negative determination on imports from Brazil and my affirmative determination on imports from Argentina.

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Commission was in effect saying that domestic producers were experiencing "an important, crippling, or mortal injury; one having permanent or lasting consequences."1/ In light of that finding it is not plausible to suggest that the "indications of recovery" observed in this investigation negate that record of mortal injury. To do so is to ignore the need for consistent Commission analysis and to magnify the impressions of an "isolated snapshot" focusing inappropriately on the performance of the domestic industry during a few of the months under investigation.2/

Finally, let me emphasize that the so-called 1984 recovery for the U.S. cold-rolled sheet industry was really not a recovery at all. It is true that at the time the Commission decided the Argentina case certain performance indicators for interim 1984 were higher than for the comparable period of 1983. In particular, this

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1/ See my discussion of the standard for serious injury in Nonrubber Footwear, Inv. No. TA-201-50 USITC Pub. 1545 (July 1984) at pp. 30-31. The quotation is from "Views of Commissioner George M. Moore," Bolts, Nuts and Screws of Iron or Steel, Inv. No. TA-201-2, USITC Pub. 747 (November, 1975) p. 19.

2/ A similar scenario presented itself to the Commission in another Title VII investigation. See "Stainless Steel from Spain." A majority of the Commission in that investigation reached a negative determination. In my dissenting views, I discussed at length the inappropriateness of "an isolated 'snapshot' approach which focuses only on the performance of this industry in recent months . . . ." In my view, the cold-rolled industry presents a similar history of cumulative, serious losses and only a recent, tentative period of improved performance.

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was true for domestic production, capacity utilization, shipments and employment levels. But some of these improvements were artificial and short-lived. For instance, the reported production increases were reflected not only in an increase in shipments but also mounting inventory levels. Indeed, during the period of slight recovery in 1984, the domestic producers reporting operating losses accounted for almost half of domestic shipments of cold-rolled sheet during the period. This is hardly evidence of an industry not experiencing harm that is "immaterial, inconsequential or unimportant." Nor is it evidence for an economic turn-around offsetting an extended period of operating losses and the adverse impact of unfair imports.

I recognize that discussion of subsequent decisions regarding this industry may be inappropriate, but in this instance it is perhaps instructive as to the dangers of misplaced reliance on brief upturns in an industry's performance. In September 1985, only nine months after the Argentine cold-rolled decision, again this Commission looked at the same industry and made an affirmative determination concluding:

> With an improvement in the economy, there was a consequential improvement in the cold-rolled sheet industry during 1983 and 1984. However, as indicated by a downturn in the first six months of 1985, the industry continues to experience difficulties.1/

1/"Carbon Steel Products from Austria and Sweden" at 9.

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As a matter of fact, the Commission report for this later investigation contains full-year 1984 data for such important indicators as production, productive capacity, capacity utilization, and shipments. They were all well below 1983 levels, and the half-year data for 1985 showed the declines continuing. In essence, the notion that partial year data pointed to an improvement in 1984 when small quantities of imports might prove noninjurious was a phantom. What this example graphically demonstrates is the danger of using a partial year "snapshot" to analyze the impact of imports on a domestic industry. Placing undue emphasis on the short-term performance of an industry characterized by cyclical demand and long-term operating losses can result in misguided and uninformed determinations. This, I believe, is one of the fallacies in the majority's negative holding; it is not supported by the substantial weight of the evidence.

Cumulation: I do not find it necessary to cumulate in reaching this affirmative determination. My conclusion reflects the following guidance of the Court provided at footnote 18 in the slip opinion:

> "Of course, if ITC determines that imports from Argentina even when analyzed separately caused injury to the U.S. industry, it need not address the issue of cumulation on remand."

In the administration of the relevant statutory provisions, it is unclear whether a Commissioner is required to cumulate without first analyzing the impact of

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imports from a country on a separate basis. It is my reading of this footnote that in Title VII investigations, a Commissioner may undertake a case-by-case analysis; and, if that analysis results in an affirmative determination, a Commissioner is not required to address cumulation.

There are other cumulation issues raised in this investigation which I anticipate that my colleagues will address. Specifically, there remains a question whether it is appropriate to cumulate the impact of imports on the basis of findings of a threat of material injury. Also, the answer to cumulation issues raised in this investigation involves the consideration of cross-cumulation.1/ Finally, it remains unclear whether the statutory provisions mandating cumulation are the exclusive basis for cumulating. Does the Commission retain discretion to cumulate, even when the statute would not otherwise require cumulation, consistent with City Lumber?2/ In that situation, the concern was a sequential, rather than a simultaneous, import hammering from more than one source.

1/ In accordance with the court's guidance in Bingham and Taylor, I have cumulated the impact of LTFV imports and subsidized imports where appropriate. See Bingham and Taylor Division, Virginia Industries, Inc. v. United States, 627 F. Supp. 793 (C.I.T. 1986), appeal docketed, Appeal. No. 86-1440 (July 8, 1986).

2/ City Lumber Co. et.al. v. the United States 290 F. Supp 385 (Cust. Ct. 1968).

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Conclusion

In my judgment the record establishes a causal link between imports of unfairly traded Argentine cold-rolled steel products under investigation and material injury to the domestic industry.

First, consistent with my analysis in previous steel cases, the seemingly small volume imports from Argentina have a magnified impact on the domestic market for these fungible products. In the context of the relevant conditions of trade, these import volumes are significant.

Second, the record establishes a compelling link between unfairly traded imports and domestic price suppression and depression sufficient to satisfy causation as required by the statute. In all quarterly pricing comparisons, the Argentine product undersold the domestic product. Also, new data on lost sales and revenue demonstrate that Argentine underpricing led to losses for the domestic industry in this investigation. In assessing the relationship between Argentine imports and domestic pricing, I have not relied on novel theories; nor have I engineered analysis based on subjective models.

Long-standing Commission procedure and decisions of our reviewing Court have upheld adherence to this pattern of analysis. In my view, it is the Commission's mandate from Congress to explain the significance of import

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volumes in terms of the relevant conditions of trade for a particular industry and to respond to specific statutory criteria.

In a larger sense, this remand raises grave questions about the consistency and quality of Commission decision-making. Also at issue is the Commission's sensitivity to statutory requirements and to the underlying principles of openness and predictability in the administration of the trade laws. In my view, the majority's negative determination cannot be supported by substantial evidence of record and was reached in a manner contrary to law.

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INFORMATION OBTAINED IN THE INVESTIGATION

Introduction

On February 9, 1987, the United States Court of International Trade remanded investigation No. 731-TA-175 (Final), Cold-Rolled Carbon Steel Plates and Sheets from Argentina, to the Commission for further consideration (Slip Op. 87-14). The Commission (with Commissioner Eckes dissenting) made a negative determination in that investigation on January 28, 1985. In addition to the information presented herein, staff comments on the effects and impact of this remand are also contained in GC memoranda GC-K-049 and GC-K-050, both dated March 2, 1987.

The Court's remand noted that when the Commission voted on this investigation it did not have information before it on the operation of the Argentine industry in 1984, and that not all of the lost sale/lost revenue allegations made by U.S. producers had been examined by the staff. Also, the Court stated that the Commission had not adequately justified its decision not to cumulate the subject imports from Argentina with unfairly traded imports from other countries in making its determination. Discussions of these issues are presented in this document.

Operations of the Argentine Producers in 1984

The discussion of the Argentine industry is presented on pages a-3, a-5, and a-6 of the staff report on the original investigation (Action Request No. INV-85-020, dated January 25, 1985). That information was provided by counsel for Propulsora, one of the two Argentine producer/exporters of cold-rolled carbon steel sheets, and covered the years 1981-83. Updated data for 1984, again provided by counsel, are presented in table 1 (note that the data for 1981-83 were originally presented in metric tons; they are now presented in short tons to be consistent with data presented elsewhere in this memorandum).

Table 1
Cold-rolled carbon steel sheets: Domestic shipments, exports, production capacity, and capacity utilization for the 2 Argentine producers that export cold-rolled sheets, 1981-84

Year	Domestic shipments	Exports to-- All countries	Exports to-- United States	Production capacity	Capacity utilization
	1,000 short tons				Percent
1981.....	***	***	***	***	***
1982.....	***	***	***	***	***
1983.....	***	***	***	***	***
1984.....	***	***	***	***	***

Source: Supplied by counsel (Mudge Rose Guthrie Alexander & Ferdon) for Propulsora, one of the two Argentine producers that export cold-rolled carbon steel sheets.

The data in table 1 show that domestic shipments for these two producers * * * during 1981-84, while export shipments * * *. Their capacity to produce

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cold-rolled sheets * * *. Capacity utilization rose from *** percent in 1981 to *** percent in 1983, and * * *. As a share of total exports, exports to the United States * * *.

Some comments on the data in table 1 are warranted. First, the reported exports to the United States differ somewhat from U.S. statistics on imports from Argentina. 1/ The differences are relatively minor, however, and appear to be the result of the time lag between date of export and date of U.S. entry. Second, the capacity utilization figures presented were calculated by dividing shipments by capacity (production would normally be used in this calculation rather than shipments). Shipments would be an acceptable proxy for production as long as the companies had no captive consumption of the products and as long as there were only minor changes in the levels of inventories from year to year. Finally, other sources report different figures for capacity and capacity utilization than those shown in the table. For example, the 8th edition of Iron and Steel Works of the World reports that in 1982 (the most recent data), production of cold-rolled sheets by these two firms was 653,000 short tons and production capacity was nearly 1.5 million short tons (table 1 shows reported shipments of *** tons and production capacity of *** tons). The resulting capacity utilization rate from this source would be 44 percent, compared with the *** percent shown in table 1. Another source, the International Iron and Steel Institute, reports that Argentina's total production of cold-rolled sheets (there is a third producer in Argentina that doesn't export) was 616,000 short tons in 1981, 750,000 tons in 1982, and 882,000 tons in 1983. Counsel for Propulsora comments on these discrepancies in its brief to the Commission.

Cumulation Issues

The Commission determined that cumulation of the Argentine imports was not appropriate. Plaintiff challenged the Commission's decision not to cumulate the Argentine imports with those from Brazil, the Republic of Korea (Korea), South Africa, and Spain. 2/ The four Commissioners that did not cumulate imports did not base their decisions not to cumulate on a single set of reasons. The Court examined the Commissioners' opinions on cumulation separately, specifically the contention by two Commissioners that cumulation is inappropriate because Argentine imports, standing alone, were not a contributing cause of injury; the contention of one Commissioner that there was no evidence of "coordinated activity" between Argentina and other countries; and the statement of one Commissioner that cumulation is always inappropriate when it would require, as in this case, cumulation across different unfair trade statutes.

Presented below is information relevant to the issue of cumulation, including information on Title VII investigations on Argentina, Brazil, Korea, Mexico, South Africa, and Spain from 1981 through January 1985; on the volume,

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1/ Official U.S. statistics indicate that U.S. imports from Argentina of cold-rolled carbon steel sheets amounted to 1 ton in 1981, 104,000 tons in 1982, 130,000 tons in 1983, and 157,000 tons in 1984.

2/ The remand memorandum of USX Corporation states on page 9 that "imports from Argentina should be cumulated with imports from Spain, South Africa, Brazil, South Korea and Mexico." (emphasis added) The Court of International Trade did not mention Mexico in Slip Op. 87-14.

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trends, and market penetration of imports, by quantity and value, from Argentina, Brazil, Korea, Mexico, South Africa, and Spain; and on matters such as channels of distribution, simultaneous marketing of the product, fungibility/ substitutability, and coordinated action by importers.

Title VII investigations on Argentina, Brazil, Korea, South Africa, and Spain

The following tabulation presents the Title VII investigations on cold-rolled carbon steel plates and sheets from Argentina, Brazil, Korea, South Africa, and Spain from 1981 through January 1985: 1/

Type of investigation and source	Commission's preliminary determinations	Commission's final determinations	Orders issued	Final weighted-average subsidy or LTFV margin (Percent)
Antidumping:				
Argentina 1/.....	Affirmative (3/84)	Negative (1/85)	--	2/
Brazil.....	Affirmative (12/83)	Negative (9/84)	--	3/
South Africa.....	Affirmative (3/84)	4/	--	--
Spain.....	Affirmative (3/84)	5/	--	6/
Countervailing duty:				
Argentina.....	7/	7/	4/84	8/
Brazil 9/.....	Negative (2/82)	--	--	--
Brazil.....	Affirmative (1/84)	Affirmative (6/84)	6/84	10/
Korea.....	Negative (6/82)	--	--	--
Korea.....	Affirmative (8/84)	Affirmative (1/85)	2/85	3.60
Mexico.....	11/	11/	--	--
South Africa.....	12/	12/	9-82	13/
Spain.....	Affirmative (6/82)	Affirmative (12/82)	1-83	14/

1/ This is the subject investigation (No. 731-TA-175).
2/ Commerce's final LTFV margins were: Propulsora--30.3 percent; Somisa--242.5 percent; all others--122.3 percent.

Footnotes continued on following page.

1/ In addition, U.S. Steel filed a countervailing duty petition against imports of certain carbon steel products, including cold-rolled sheets, from Mexico on Nov. 10, 1983. Subsequent to Commerce's affirmative preliminary subsidy determination of Feb. 3, 1984, the Government of Mexico announced publicly the adoption of an export restraint policy whereby steel shipments to the United States would be subject to quantitative limitations over a 3-year period. On April 18, 1984, U.S. Steel withdrew its countervailing duty petition and requested that the investigation be terminated. Commerce terminated the investigation effective April 18, 1984.

U.S. imports of cold-rolled carbon steel sheets from Mexico amounted to 1 ton, valued at less than $500, in 1981; 47 tons, valued at $16,000, in 1982; 40,326 tons, valued at $11.3 million, in 1983; 33,591 tons, valued at $9.6 million, in January-September 1983; and 54,185 tons, valued at $16.8 million, in January-September 1984.

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Footnotes--Continued

3/ Commerce's final LTFV determinations were: Cosipa--0.00 percent (de minimis); CSN--0.06 percent (de minimis); Usiminas--1.40 percent; all others--0.91 percent.
4/ Terminated by the Department of Commerce after U.S. Steel withdrew its petitions on May 10, 1984.
5/ The Commission's investigation was terminated effective Jan. 22, 1985, after U.S. Steel withdrew its petitions on Jan. 18, 1985.
6/ Commerce's final LTFV determinations were: AHV--17.37 percent; Ensidesa--22.15 percent; all others--21.24 percent.
7/ Investigation filed with the Department of Commerce only, since Argentina is not a "country under the agreement" within the meaning of sec. 701(b) of the Tariff Act of 1930.
8/ Commerce's final subsidy determinations were: Propulsora--2.34 percent; Somisa--6.42 percent; all others--5.44 percent.
9/ The investigation included carbon steel strip.
10/ Commerce's final subsidy determinations were: Cosipa--36.48 percent; CSN--62.18 percent; Usiminas--17.49 percent; all others--36.95 percent.
11/ Investigation filed with the Department of Commerce only, since Mexico was not a "country under the agreement" within the meaning of sec. 701(b) of the Tariff Act of 1930.
12/ Investigation filed with the Department of Commerce only, since South Africa is not a "country under the agreement" within the meaning of sec. 701(b) of the Tariff Act of 1930.
13/ Commerce's final subsidy determinations were: (1) for products exported before April 1, 1982 and entered, or withdrawn from warehouse, for consumption on or after Sept. 7, 1982: ISCOR--11.8 percent; all others--11.8 percent; (2) for products exported on or after April 1, 1982 and entered, or withdrawn from warehouse, for consumption on or after Sept. 7, 1982: ISCOR--0.0 percent (de minimis); all others--0.0 percent (de minimis). (The total bounty or grant that ISCOR received on steel products shipped after April 1, 1982 is 0.35 percent ad valorem; Commerce considered that rate to be de minimis.)
14/ Commerce's final subsidy determinations were: Altos Hornos Del Mediterraneo, S.A.--38.25 percent; Empresa Nacional Siderurgica, S.A.--10.12 percent; all others--38.25 percent.

The volume, value, and trends of imports

Information on the volume and value of U.S. imports, U.S. producers' domestic shipments, and apparent U.S. consumption are presented in table 2. The volume of imports from Argentina, from 5 countries, and from all countries each increased in each of the years and periods covered by the investigation. The value of imports from Argentina and from 5 countries increased in each of the years and periods covered by the investigation, and the value of imports from all countries decreased slightly in 1982, increased in 1983, and increased in January-September 1984 compared with the level of imports in the corresponding period of 1983.

Market penetration of imports

Imports from Argentina.--Market penetration of the volume of imports of cold-rolled sheets from Argentina increased from less than 0.05 percent of the

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Table 2
Cold-rolled carbon steel sheets: U.S producers' domestic shipments, imports for consumption from selected countries, and apparent U.S. consumption, 1981-83, January-September 1983, and January-September 1984

Item	1981	1982	1983	January-September-- 1983	1984
	Quantity (1,000 short tons)				
U.S. producers' domestic shipments	13,702	10,544	12,972	9,395	10,003
Imports 1/ from--					
Argentina 2/	3/	104	130	92	116
Brazil 4/	19	45	343	217	204
Republic of Korea	101	66	191	124	316
South Africa	40	42	103	74	73
Spain	62	48	67	51	218
Subtotal, 5 countries	222	305	834	558	927
All sources	1,546	1,599	2,341	1,550	2,590
Apparent U.S. consumption	15,248	12,143	15,313	10,945	12,593
	Value (million dollars)				
U.S. producers' domestic shipments 5/	6,070	4,660	5,760	4,143	4,681
Imports 1/6/ from--					
Argentina 2/	3/	40	47	34	42
Brazil	9	18	119	75	73
Republic of Korea	45	28	71	46	126
South Africa	17	18	35	24	25
Spain	30	22	23	17	79
Subtotal, 5 countries	101	126	295	196	345
All sources	709	701	906	597	1,053
Apparent U.S. consumption	6,779	5,361	6,662	4,740	5,734
	Unit value (per short ton)				
U.S. producers' domestic shipments	$443	$442	$444	$441	$468
Imports 1/ from--					
Argentina 2/	3/	385	359	370	360
Brazil	479	406	345	344	356
Republic of Korea	448	428	372	367	400
South Africa	420	428	339	328	342
Spain	487	454	343	325	364
Average, 5 countries	455	413	354	351	372
All sources	459	438	387	385	407
Apparent U.S. consumption	445	441	435	433	455

1/ Includes imports under TSUSA items 607.8350, 607.8355, and 607.8360. Although imports of cold-rolled plates under TSUSA item 607.8320 (which are

Footnotes continued on following page.

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Footnotes to Table 2--Continued

believed to consist principally of pickled plates) are included within the scope of this investigation; such imports are believed to be negligible.
2/ Data for 1983 and January-September 1983 were revised by the staff of the U.S. International Trade Commission, based on discussions with the Bureau of the Census, U.S. Department of Commerce.
3/ In 1981, 1 short ton of cold-rolled carbon steel sheets was imported from Argentina.
4/ Of the three Brazilian firms for which sales were examined by the Department of Commerce, Usiminas was the only one that was found in Commerce's final determinations to have LTFV margins of 0.5 percent or above (Cosipa and CSN were found to have LTFV margins of below 0.5 percent, which Commerce considers to be de minimis). Exports of cold-rolled carbon steel sheets by Usiminas to the United States amounted to *** short tons in 1982 (*** percent of apparent U.S. consumption), *** short tons in 1983 (*** percent of apparent U.S. consumption), and *** short tons in January-June 1984.
5/ Estimated by the staff of the U.S. International Trade Commission by applying the average unit value (f.o.b. plant) of domestic shipments as reported in Commission questionnaires to shipment data compiled by the American Iron & Steel Institute (AISI). Respondents to Commission questionnaires accounted for 93 percent of AISI shipments in 1981, 89 percent in 1982, 91 percent in 1983, 93 percent in January-September 1983, and 96 percent in January-September 1984.
6/ Data shown are the c.i.f. values of imports, plus calculated duties.

Source: Compiled from data of the American Iron & Steel Institute and from official statistics of the U.S. Department of Commerce, except as noted.

Note.--Because of rounding, figures may not add to the totals shown. Unit values were computed from unrounded data.

volume of apparent U.S. consumption in 1981 1/ to 0.9 percent in 1982, and remained at the 0.8 or 0.9 percent level through January-September 1984 (table 3). Market penetration of the value of imports of cold-rolled sheets from Argentina increased from less than 0.05 percent of the value of apparent U.S. consumption in 1981 to 0.7 percent in 1982, and remained at the 0.7 percent level through January-September 1984.

Imports from Argentina, Brazil, Korea, South Africa, and Spain.--Market penetration of the volume of imports from the 5 countries increased from 1.4 percent in 1981 to 2.5 percent in 1982 and 5.4 percent in 1983, and was 7.4 percent in January-September 1984, an increase from the 5.1 percent level of January-September 1983. 2/ Market penetration of the value of imports from the 5 countries increased from 1.5 percent in 1981 to 2.4 percent in 1982 and

1/ There were no imports of cold-rolled sheets from Argentina in 1980 and only 1 ton in 1981.
2/ Market penetration of the volume of imports from Mexico increased from less than 0.05 percent in 1981 and 1982 to 0.3 percent in 1983, and was 0.4 percent in January-September 1984, an increase from the 0.3 percent level of January-September 1983.

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Table 3
Cold-rolled carbon steel sheets: Ratios of U.S imports for consumption from selected countries to apparent U.S. consumption, 1981-83, January-September 1983, and January-September 1984

(In percent)

Item	1981	1982	1983	January-September-- 1983	1984
	On the basis of quantity				
Imports 1/ from--					
Argentina 2/	3/	0.9	0.8	0.8	0.9
Brazil	0.1	.4	2.2	2.0	1.6
Republic of Korea	.7	.5	1.2	1.1	2.5
South Africa	.3	.3	.7	.7	.6
Spain	.4	.4	.4	.5	1.7
Subtotal, 5 countries	1.4	2.5	5.4	5.1	7.4
All sources	10.1	13.2	15.3	14.2	20.6
	On the basis of value				
Imports 1/ from--					
Argentina 2/	3/	.7	.7	.7	.7
Brazil	.1	.3	1.8	1.6	1.3
Republic of Korea	.7	.5	1.1	1.0	2.2
South Africa	.2	.3	.5	.5	.4
Spain	.4	.4	.3	.4	1.4
Subtotal, 5 countries	1.5	2.4	4.4	4.1	6.0
All sources	10.4	13.1	13.6	12.6	18.4

1/ Includes imports under TSUSA items 607.8350, 607.8355, and 607.8360. Although imports of cold-rolled plates under TSUSA item 607.8320 (which is believed to consist principally of pickled plates) are included within the scope of this investigation, such imports are believed to be negligible.
2/ Data for 1983 and January-September 1983 were estimated by the staff of the U.S. International Trade Commission.
3/ Less than 0.05 percent.

Source: Table 2.

Note.--Because of rounding, figures may not add to the totals shown. Ratios were computed from unrounded data.

4.4 percent in 1983, and was 6.0 percent in January-September 1984, an increase from the 4.1 percent level of January-September 1983. 1/

Imports from all countries.--Market penetration of the volume of imports from all countries increased from 10.1 percent in 1981 to 13.2 percent in 1982 and 15.3 percent in 1983, and was 20.6 percent in January-September 1984, an increase from the 14.2 percent level of January-September 1983. Market

1/ Market penetration of the value of imports from Mexico increased from less than 0.05 percent in 1981 and 1982 to 0.2 percent in 1983, and was 0.3 percent in January-September 1984, an increase from the 0.2 percent level of January-September 1983.

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penetration of the value of imports from the 5 countries increased from 10.4 percent in 1981 to 13.1 percent in 1982 and 13.6 percent in 1983, and was 18.4 percent in January-September 1984, an increase from the 12.6 percent level of January-September 1983.

Channels of distribution and related topics

Cold-rolled carbon steel sheets imported from Argentina are fungible with cold-rolled carbon steel sheets imported from other countries and with domestically-produced cold-rolled carbon steel sheets. In general, imports of such cold-rolled sheets from all sources compete for the same customers, e.g., service centers, and have a simultaneous impact in the U.S. market. Counsel for the petitioner indicated that the Eastern region of the United States is the single most important U.S. region for the distribution of cold-rolled sheets from Argentina, South Africa, and Spain, while the single most important U.S. region for Brazil and Mexico is the South and the single most important U.S. region for Korea is the West. 1/ Indeed, table 4 indicates that most imports from Korea in 1982, 1983, and January-September 1984, and most imports from Brazil in 1983 and January-September 1984, entered through U.S. ports other than the ports where U.S. imports from Argentina entered.

Based on a review of unverified data appearing in the U.S. Customs Service's net import file, the 6 importers 2/ of cold-rolled sheet from Argentina during 1984 appear to be different from the importers of most cold-rolled sheet from Brazil, Korea, Mexico, South Africa, and Spain. The 6 importers from Argentina accounted for only approximately *** percent of U.S. imports of cold-rolled sheet from Brazil in January-September 1984, *** percent of imports from Korea, *** percent of imports from Mexico, *** percent of imports from South Africa, and *** percent of imports from Spain. No evidence has been obtained concerning coordinated action by importers of material from Argentina with other importers.

Price correlations 3/

Economic issues relative to cumulation 4/ include the substitutability of the imported products from the various countries, and the extent to which their impact on the domestic market can or cannot be distinguished.

Some evidence on substitutability is given by simple correlations between the prices presented in the original staff report for imports from Argentina, South Africa, Korea, and Brazil 5/ of "cold-rolled carbon steel sheets, in coils, commercial quality, class 1, 0.0280 inch through 0.0630 inch in thickness, 45 inches through 60 inches in width." The data for Argentina and Korea are from the 2nd quarter of 1982 through the 3rd quarter of 1984, while the data for South Africa go only through the end of 1983 and for Brazil only through the 3rd quarter of 1983. Except for the Brazilian data, which reflect

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1/ Prehearing brief of United States Steel Corp., Dec. 10, 1984, pp. 45 and 47.
2/ The six importers are * * *. In addition, * * * was listed as an importer, but * * * is known to be a customshouse broker. * * *.
3/ This section was prepared by the Office of Economics.
4/ This is to be distinguished from the legal issues such as, for example, those related to cross-cumulation.
5/ There were not sufficient price data to include Spain.

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Table 4
Cold-rolled carbon steel sheets: Shares of U.S imports 1/ for consumption from selected countries that entered the United States through the principal ports through which imports from Argentina were entered, 1982, 1983, and January-September 1984

(In percent)

Port	Imports from-- Argentina	Brazil	Republic of Korea	South Africa	Spain
			1982		
Chicago, IL	46.1	5.1	-	-	66.9
Bridgeport, CT	15.4	6.9	2.3	-	7.9
Philadelphia, PA	15.1	10.2	3.2	40.2	-
New York, NY	13.6	22.6	-	-	-
Houston, TX	6.7	28.2	3.4	10.0	14.3
Total, 5 ports	96.8	72.9	8.8	50.2	89.2
			1983		
Chicago, IL	52.4	13.4	-	7.0	28.9
Philadelphia, PA	17.6	9.7	4.2	29.8	3.9
Detroit, MI	6.9	4.3	-	5.7	45.3
New York, NY	6.9	7.0	6.3	-	-
Wilmington, NC	5.6	.7	-	3.2	-
Houston, TX	2.7	9.4	6.6	21.5	4.5
Duluth, MN	2.6	1.3	-	-	-
Total, 7 ports	94.6	45.7	17.2	67.2	82.6
			January-September 1984		
Chicago, IL	38.8	11.4	-	24.2	37.3
Bridgeport, CT	20.2	4.5	3.4	7.5	15.1
Wilmington, NC	14.9	-	1.1	3.6	.7
Houston, TX	6.4	8.4	9.5	10.9	1.3
New York, NY	5.4	1.6	5.3	-	.9
Cleveland, OH	5.1	2.0	-	-	-
Miami, FL	4.0	-	.9	-	-
Philadelphia, PA	3.0	9.1	8.3	15.6	11.4
Total, 8 ports	97.8	37.0	28.6	61.7	66.7

1/ Includes imports under TSUSA items 607.8350, 607.8355, and 607.8360. Although imports of cold-rolled plates under TSUSA item 607.8320 (which is believed to consist principally of pickled plates) are included within the scope of this investigation, such imports are believed to be negligible.

Source: Compiled from official statistics of the U.S. Department of Commerce (imports from Argentina in 1983 not adjusted as in tables 2 and 3).

Note.--Because of rounding, figures may not add to the totals shown. Ratios were computed from unrounded data.

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average net purchase prices in the Portland/Seattle area (based on purchaser questionnaires), the data are indexes of weighted-average net selling prices of imports in the United States based on importer questionnaires. The price indexes obtained from importer questionnaires (i.e., all but the Brazilian data) do not include transportation charges and are averaged over the entire U.S. market, while the prices used for Brazilian imports, derived from purchaser questionnaires, include transportation charges and are specific to a particular geographical area. Although a direct comparison of prices is not possible, a comparison of trends in these price series, as reflected in the correlations reported below, is of some utility.

	Brazil	Korea	South Africa
Argentina.....	0.01 (6)	0.40 (10)	0.24 (7)
South Africa...	.77 * (6)	.90 * (7)	
Korea.....	.78 * (6)		

Note: The number of quarters used in calculating a correlation is given in parentheses. An asterisk (*) indicates that a correlation coefficient this high would occur less than 10 percent of the time if the "true" correlation was zero.

While all of the price indexes are positively correlated, the Argentine prices are less highly correlated with those of the other three countries and not in a statistically significant manner than are the prices of those countries with each other.

A direct view of these trends can be seen in figure 1, which presents a plot of all of these price indexes, including the U.S. domestic price of the product. 1/ It is important to note that the Argentine prices seem generally to have followed the basic pattern observed in the other price series, except for the large increase in price in the 3rd quarter of 1982 and the large price decline in the 3rd quarter of 1984; these two divergences (out of a total of only 10 observations) go a long way toward explaining the weak correlation between Argentine and other import price indexes shown above.

Producer flexibility to shift to other products

Producers of cold-rolled carbon steel plate and sheet can easily shift production to other related steel products, such as hot-rolled plate and sheet and coated products, assuming the market exists for additional supplies of such steel products.

Lost Sales and Lost Revenues

Lost sales

Old lost sales information.--In its response to the Commission's questionnaire, U.S. Steel submitted 5, not 7, allegations of lost sales, each of which involved a different purchasing firm. 2/ On the page of the

1/ All of these indexes are set equal to 100 in the 2nd quarter of 1982.
2/ The list of alleged lost sales and lost revenues and the page listing the identities of alleged purchasers are presented in appendix A.

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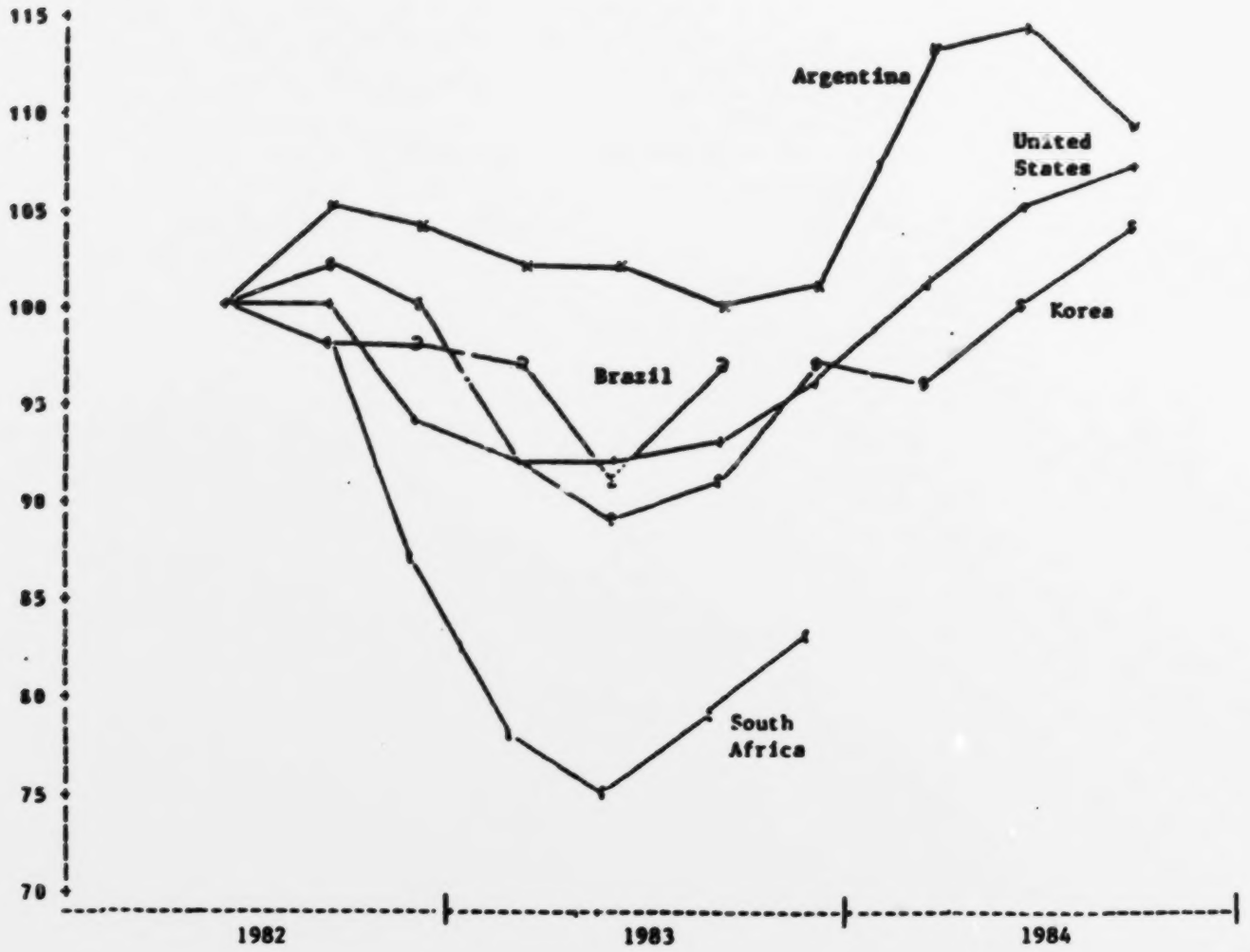
Figure 1.--Prices of cold-rolled sheet from the United States, Argentina, Brazil, Korea, and South Africa, 1982-84



Sources: For U.S. and Argentina, p. a-32 of Staff Report in 731-TA-175 (Final); for Brazil, p. II-24 of Staff Report in 701-TA-205 to 207 (Final); for Korea, p. A-37 of Staff Report in 701-TA-218 (Final); and for South Africa, p. II-21 of Staff Report in 701-TA-212 and 731-TA-169 to 182 (Preliminary).

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questionnaire response listing the confidential identities of purchasers involved in the instances of alleged lost sales and lost revenues, U.S. Steel named 7 different firms, 5 for alleged lost sales and 2 for lost revenues. These 7 firms may have caused the confusion in the confidential staff report on page a-34, which referred to *** lost sales allegations. 1/

The Commission staff investigated 3 of the 5 lost sales allegations and incorporated the respective responses in the original report. One respondent purchasing firm had a * * * was unable to provide any information on the alleged purchase of Argentine cold-rolled sheets. A second firm * * * the Argentine product, stating that any of the firm's purchases of South American cold-rolled sheets came from * * *. The third firm confirmed buying the Argentine product as alleged, but could not verify U.S. Steel's alleged competing offer price on that transaction. Whether or not this qualifies as a confirmed lost sale is a matter left to the discretion of each Commissioner. It should be noted, however, that most firms do not keep records of competing price quotes once a sourcing decision has been made.

New lost sales information.--U.S. Steel identified * * * as the purchaser in an alleged lost sale in * * * for * * * of cold-rolled sheets to competing product imported from Argentina. * * * allegedly rejected U.S. Steel's offer price of $*** per ton in favor of the alleged quote of $*** per ton for the competing Argentine cold-rolled sheets. Although this * * * purchase date precedes the period for which the Commission requested data on lost sales, 2/ the staff investigated the allegation.

* * * responded to the ITC staff inquiry. He stated that the firm * * * during that time period. Although specific records for such a * * * transaction are not available, * * * said that the alleged facts, in general, are * * *. The alleged quantity, *** tons, was and is the typical order size of cold-rolled sheets purchased by * * *. The alleged domestic offer price of $*** per ton "* * *". As for the alleged price of the Argentine cold-rolled sheets, * * * noted that "* * *". 3/ He explained that "you have to convert actual weight price to theoretical weight price by adding roughly $*** per ton to the Argentine price in order to compare it to the U.S. Steel offer price based on theoretical weight price". This conversion then reflects a price of $*** for the Argentine product compared to $*** per ton for the domestic sheets. * * * emphasized that these competing products are both substitutable, commodity grades of cold-rolled sheets. The Argentine product is "not quite as good" as the domestic sheets but is very acceptable to a broad range of * * *'s customers. According to * * *, this quality factor in itself translates into a 3 to 4 percentage point lower price for the Argentine product. * * * then added that in a competitive market, apart from the quality percentage differential, the prices of imported cold-rolled sheet from whatever country must be an additional 4 to 5 percentage points below the

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1/ ITC staff contacted U.S. Steel to check these numbers. U.S. Steel confirmed submitting 5 allegations of lost sales and 2 allegations of lost revenue.

2/ Lost sale/lost revenue allegations were requested in the Commission's questionnaire for 1983 and 1984.

3/ The $*** price per hundredweight equates with the price per ton in this allegation of $***. In the steel trade, prices are quoted in dollars per hundredweight rather than dollars per ton.

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domestic price to receive any consideration by a purchasing manager. Consequently, * * * asserted, an Argentine price reflecting an overall differential of 7 to 9 percent "would have been a fair attractive price" 1/ for the imported cold-rolled sheets compared to U.S. Steel's offer price. Queried as to the import source of the Argentine product, * * * noted that * * *.

* * * was cited by U.S. Steel in another lost sale allegation involving a volume of *** tons of cold-rolled sheets in * * *. Allegedly, the domestic quote of $***-$*** per ton for a series of various gauge cold-rolled sheets was rejected in favor of competing imported product from Argentina offered at $*** per ton. * * *, a principal in the firm, checked purchase records and provided a partial perspective regarding the allegation. No first-hand corroboration was possible because the buyer at that time * * *. * * * did learn from purchase records that * * * did buy *** tons of cold-rolled sheets of unknown origin at that time. The order was for * * *. The source of the purchase was * * * that buys imported steel as well as domestic mill surplus and over-runs. The prices of this purchase ranged from a low of $*** per hundredweight to a high of $***, or from $*** to $*** per ton. * * * could not specifically determine whether these prices were at "laid in cost" including transportation charges but surmised that this was so and that the prices were delivered to * * *, as is the current billing practice by the firm. Nor could * * *, in conjunction with * * * people, determine whether or not some or all of this shipment was Argentine cold-rolled sheets. 2/ He emphasized that * * * buys such commodity steel to certain specifications without regard to mill source, foreign or domestic, and simply has the vendor * * * certify as to the specs, but does not know or require the origin of the steel. Only if some marking on the rolls makes the source evident would the import or domestic origin be known. For example, certain rolls of cold-rolled sheets received in the recent past have had * * * brand markings. According to * * *, the gauges of the *** tons of cold-rolled sheets purchased from * * * were all generic product, whether domestic or imported. Although there was no way to verify the alleged U.S. Steel price, * * * believed it was probably a list price.

Lost revenues

Old lost revenues information.--Contrary to the report (page a-36) and the remand (page 8), U.S. Steel submitted 2, not 3, allegations of lost revenues that involved a total quantity of *** tons of cold-rolled sheets and roughly $*** in lost revenues. 3/ The ITC staff was able to follow up on only one of these allegations in the initial investigation but did not receive a response from the firm's purchasing agent, * * *, at that time The staff was successful in obtaining a response at this time.

1/ In this particular transaction, the price differential (based on theoretical weight) amounted to *** percent.

2/ ITC staff contacted * * *. * * * affirmed that * * * had purchased Argentine cold-rolled sheets from * * * and from * * * during that time period. He rated the product as * * *. * * * could not provide price quote information for such a distant time period. He noted that Brazil and other countries were stronger market participants during that time.

3/ The list of lost revenues allegations is presented in appendix A.

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The other named firm could not be contacted because the firm's name turned out to be incorrect and there was no phone listed under the incorrect name in * * *. Subsequent to the remand, the Commission Staff contacted John Mangan at U.S. Steel on February 27, 1987, to obtain additional information to pursue that allegation. John Mangan corrected the name of the firm from * * * to * * * and provided the names of persons to contact at that firm.

New lost revenues information.--* * * was identified as the purchasing firm in an instance of lost revenues involved in the sale of *** tons of cold-rolled sheets in * * *. Allegedly, U.S. Steel reduced its initial offer price of $*** per ton to $*** per ton in the face of * * * price of $*** per ton for cold-rolled sheets imported from Argentina. Notwithstanding the fact that the buyer * * *, * * * was able to trace the alleged purchase and provided the following facts. * * * did buy *** tons of cold-rolled sheets from U.S. Steel at that time, as alleged. The base price for this shipment was $*** per ton. Extras could have pushed the price up close to the alleged price of $*** submitted by U.S. Steel. As for the initial offer price by U.S. Steel and the alleged price of the Argentine product, no record is kept of competing bids once an order is placed. * * * noted that the alleged U.S. Steel initial price of $*** per ton appears to be a list price and that U.S. Steel would have had to meet the narrow range of market prices being offered at the time and would be unlikely to have quoted a list price as an initial offer. A * * * views its ability to compete as critical and must source accordingly, especially in a weak market characterized by broad-based import competition. At such a time, prices tend to cluster fairly close together with imports lower in price to reflect the considerations of cost of stocking, returns, and delays in shipments. To be competitive, U.S. Steel had to quote a price reasonably close to the market price cluster. As for the price of the Argentine product, * * * found that * * *. * * *. According to * * *, this * * * sheet costs more to make, especially on U.S. Steel's 84 inch mill, and there is lower productivity in such a mill run. In contrast, * * * is readily made on that size mill and offered by foreign mills. * * *, at ITC staff request, also checked other purchases of imported cold-rolled sheets by * * * and found that cold-rolled sheet prices clustered around $*** per ton from alternative import source countries during this time period in 1983. All of the imported product is viewed as commodity cold-rolled sheet and a satisfactory substitute for domestic product in a given market.

* * *. * * * is an integrated trading company related to * * *. * * *. This relationship gave * * * an alternate, supplemental source for cold-rolled sheets at the time that the first VRA with European mills constrained supply from the EC member countries. * * * noted, however, that the Argentine presence in the market was never strong. There was no opportunity for large tonnage purchases, e.g., *** tons at a crack, or to contract for a years supply on a quarterly basis. There was a limited on-going presence but not an aggressive effort to move large tonnage.

* * * was named by U.S. Steel as purchaser in an instance of alleged lost revenues involving the sale of *** tons of cold-rolled sheets in * * *. U.S. Steel alleged that it reduced its initial quote of $*** per ton to $*** per ton in order to make the sale in competing against * * * $*** per ton for Argentine product. * * * provided the following information. The company uses roughly *** tons of cold-rolled sheets per year in its production of * * *. * * * sources this tonnage from * * *. U.S. Steel is a major domestic

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source and cold-rolled sheets from * * *'s mill, imported by * * *, are a major source of * * *. About *** to *** percent of the total tonnage purchased is * * *.

A check of the firm's purchase records revealed that during * * * ordered a total of *** tons of cold-rolled sheets from U.S. Steel. * * *. The prices of the * * * ranged from $*** per ton to $*** per ton and averaged $*** per ton. As for the alleged price of $*** for competing Argentine product, * * * stated that the import competition was from * * * cold-rolled sheets. * * *. According to * * * the imported product was of better quality than the domestic cold-rolled sheets. * * * could not say the same for a single *** ton shipment of the * * * cold-rolled sheets purchased in the * * * at a price of $*** per ton from * * *. The quality, i.e., the surface finish, was not good. * * * instructed * * * at that time not to fill any more of the company's orders with cold-rolled sheets from * * *.

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APPENDIX A

ALLEGATIONS OF LOST SALES AND LOST REVENUES AND IDENTITIES OF ALLEGED PURCHASERS

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